

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 04/21/2005**



**State of Oregon
Department of
Environmental
Quality**

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Environmental Quality Commission Meeting April 20 – 22, 2005 in Boardman

Wednesday, April 20

- Afternoon Travel to Boardman, check in to the **Riverfront Lodge Hotel** (6 Marine Drive, Boardman). The hotel phone is (541) 481-6800 and fax is (541) 481-6801.
- 5:30 Dinner with Eastern Region staff to discuss local issues and DEQ's work at the **Riverfront Lodge Hotel restaurant** (6 Marine Drive, Boardman).

Thursday, April 21

- 8:15 Walk to the **Port of Morrow, Riverfront Room** (2 Marine Drive). Facility phone: (541) 481-7678 fax: (541) 481-2679
- 8:30 – 9:00 Presentation on Three Mile Canyon Farm at the Port of Morrow Riverfront Room
- 9:00 – 9:30 Travel on bus to the Farm, with microphone for discussion and Q & A
- 9:30 – 10:30 Tour composing operations
- 10:30 – 11:00 Travel back to the Port
- 11:00 – 12:45 Executive session and a working lunch in the **Sand Hollow Room**
- 1:00 – 5:00 Regular EQC meeting in the **Port of Morrow's Riverfront Room**
- 1:00 – 1:05 A. Approval of Minutes
- 1:05 – 1:30 B. Informational Item: Results of the Columbia River 2004 Spill Season, Holly Schroeder, Agnes Lut
- 1:30 – 2:00 C. Informational Item: Oregon's Assessment of the Oregon Plan for Salmon and Watersheds, Mary Abrams and Louise Solliday (Governor's Office)
- 2:00 – 2:15 Break
- 2:15 – 5:00 D. Government to Government Dialogue with the Confederated Tribes of the Umatilla Indian Reservation: Oregon's Water Quality Toxics Standards and the Fish Consumption Rate, Paul Slyman, Holly Schroeder, Bob Baumgartner
- 5:30 Dinner at the **Riverfront Lodge Hotel restaurant** (6 Marine Drive, Boardman)
 Phone: (888) 988-2009
- 7:00 Evening with local officials (Gary Neal, Port of Morrow manager will help lead discussion) **Riverfront Lodge restaurant lounge** (upstairs) Phone: (888) 988-2009.

Friday, April 22

- 9:00 – noon Conclude regular EQC meeting in the **Port of Morrow's Riverfront Room**.
- 9:00 – 9:15 E. Director's Dialogue, Stephanie Hallock
- 9:15 – 9:45 F. Informational Item: Update on the Status of the Umatilla Chemical Agent Disposal Facility, Dennis Murphey
- 9:45 – 10:30 G. Informational Item: Update on Agency Toxics Reduction Strategy, Mary Abrams, Fenix Grange
- 10:30 – 11:00 H. Informational Item: Status of the Board of Forestry riparian rulemaking (include effects of M 37, if appropriate), Holly Schroeder, Koto Kishida, Ted Lorensen
- 11:00 – 11:50 Public Forum
- 11:50 - noon I. Commissioners' Reports
- noon – 3:00 Tour Arlington Hazardous Waste Disposal Facility, meet with Chem Waste officials
 Includes a working lunch
- To get from Boardman to Arlington: Take I-84 West to Exit 137, Arlington. Veer right onto Beech Street, and turn left to "The Mall" parking lot. A bus will take everyone to the facility from there.*
- 3:00 Travel home

Environmental Quality Commission Meeting
April 21 – 22, 2005¹
Port of Morrow – Riverfront Room
2 Marine Drive, Boardman

Thursday, April 21 – regular meeting begins at 1:00 p.m.

Prior to regular session, the Commission will attend a facility tour of Three Mile Canyon. Following the tour, the Commission will hold an Executive Session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the DEQ². Only representatives of the media may attend, and media representatives may not report on any deliberations during the session.

A. Approval of Minutes from February 3 & 4, 2005

The Commission will review, amend if necessary, and approve draft minutes of the February 3 and 4, 2005, Commission meeting.

B. Informational Item: Results of the Columbia River 2004 Spill Season

The purpose of this item is to provide the Commission with information on the 2004 spill season Total Dissolved Gas (TDG) levels in the Lower Columbia River dam forebays and tailraces. We will also discuss the EQC waivers of the state TDG water quality standard for U.S. Army Corp of Engineers and U.S. Fish and Wildlife.

Holly Schroeder, DEQ Water Quality Division Administrator; Agnes Lut, DEQ

C. Informational Item: Oregon's Assessment of the Oregon Plan for Salmon and Watersheds

The purpose of this informational item is to inform the Commission about the findings from a recent assessment of the Oregon Plan for Salmon and Watersheds. DEQ and other state natural resources agencies reviewed the Oregon Plan's affect on Oregon Coastal coho salmon populations. The National Oceanographic and Atmospheric Administration Fisheries Division is considering listing the Oregon Coastal coho salmon as threatened under the federal Endangered Species Act (ESA).

Mary Abrams, DEQ Lab Administrator, Louise Solliday (Governor's Office)

D. Government to Government Dialogue with the Confederated Tribes of the Umatilla Indian Reservation: Oregon's Water Quality Toxics Standards and the Fish Consumption Rate

Discuss the rules adopted by the Commission on May 20, 2004, which revised water quality criteria for toxic pollutants.

Paul Slyman, DEQ Deputy Director; Holly Schroeder, DEQ Water Quality Division Administrator, Bob Baumgartner, DEQ

¹ This agenda and the staff reports for this meeting can be viewed and printed from DEQ's web site at <http://www.deq.state.or.us/about/eqc/eqc.htm>.

² This executive session will be held pursuant to ORS 192.660(1)(h).

Friday, April 22 – regular meeting begins at 9:00 a.m.

E. Director's Dialogue

Stephanie Hallock, DEQ Director, will discuss current events and issues involving the Department and the state with Commissioners.

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

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, will give an update on the status of recent activities at the Umatilla Chemical Agent Disposal Facility (UMCDF). In August 2004, the Commission gave approval to start chemical weapon destruction at UMCDF and DEQ's Chemical Demilitarization Program continues close oversight of work at the facility.

G. Informational Item: Status of DEQ Efforts to Reduce Toxics in Our Environment

Update the Commission on DEQ's Toxics Reduction Strategy with focus on four toxics reduction pilot projects agreed upon with EPA in the 2004 Performance Partnership Agreement.

Mary Abrams, DEQ Lab Administrator; Fenix Grange, DEQ

H. Informational Item: Status of the Board of Forestry Riparian Rulemaking

Present a status report on the rulemaking and other activities of the Board of Forestry (Board) and Oregon Department of Forestry (ODF) under the Oregon Forest Practices Act in response to the *Forest Practices Act Sufficiency Analysis* completed in October 2002. The Sufficiency Analysis was a collaborative, three year joint effort by the DEQ and ODF to determine the effectiveness of the Forest Practices Act in protecting water quality. This item builds on the Commission's forest practices discussions on February 6 and July 7, 2004, the Board's ongoing meetings since July 2003 regarding water protection rule concepts, and the joint meeting of the Commission and the Board on October 21, 2004, in Tillamook.

Holly Schroeder, DEQ Water Quality Division Administrator; Koto Kishida, DEQ Program, Policy & Project Assistance; Ted Lorensen, ODF.

I. Commissioners' Reports

A tour of the Arlington Hazardous Waste Disposal Facility will follow.

Adjourn

Future Environmental Quality Commission meeting dates for 2005 include:

June 23-24 August 18-19 October 20-21 December 8-9

Agenda Notes

***Rule Adoptions:** Hearings have been held on Rule Adoption items and public comment periods have closed. In accordance with ORS 183.335(14), no comments may be presented by any party to either the Commission or Department on these items at any time during this meeting.

Staff Reports: Staff reports for each item on this agenda can be viewed and printed from DEQ's web site at <http://www.deq.state.or.us/about/eqc/eqc.htm>. To request a particular staff report be sent to you in the mail, contact Day Marshall in the Director's Office of the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204; telephone 503-229-5990, toll-free 1-800-452-4011 extension 5990, or 503-229-6993 (TTY). Please specify the agenda item letter when requesting reports. If special physical, language or other accommodations are needed for this meeting, please advise Ms. Marshall as soon as possible, but at least 48 hours in advance of the meeting.

Public Forum: The Commission will break the meeting at approximately 11:00 a.m. on Friday, April 22 to provide members of the public an opportunity to speak to the Commission on environmental issues not part of the agenda for this meeting. Individuals wishing to speak to the Commission must sign a request form at the meeting and limit presentations to five minutes. The Commission may discontinue public forum after a reasonable time if a large number of speakers wish to appear. In accordance with ORS 183.335(13), no comments may be presented on Rule Adoption items for which public comment periods have closed.

Note: Because of the uncertain length of time needed for each agenda item, the Commission may hear any item at any time during the meeting. If a specific time is indicated for an agenda item, an effort will be made to consider that item as close to that time as possible. However, scheduled times may be modified if participants agree. Those wishing to hear discussion of an item should arrive at the beginning of the meeting to avoid missing the item.

Environmental Quality Commission Members

The Environmental Quality Commission is a five-member, all volunteer, citizen panel appointed by the governor for four-year terms to serve as DEQ's policy and rule-making board. Members are eligible for reappointment but may not serve more than two consecutive terms.

Mark Reeve, Chair

Mark Reeve is an attorney with Reeve Kearns in Portland. He received his A.B. at Harvard University and his J.D. at the University of Washington. Commissioner Reeve was appointed to the EQC in 1997 and reappointed for a second term in 2001. He became Chair of the EQC in 2003. Commissioner Reeve also serves as a member of the Oregon Watershed Enhancement Board.

Lynn Hampton, Vice Chair

Lynn Hampton serves as Tribal Prosecutor for the Confederated Tribes of the Umatilla Indian Reservation and previously was Deputy District Attorney for Umatilla County. She received her B.A. at University of Oregon and her J.D. at University of Oregon School of Law. Commissioner Hampton was appointed to the EQC in July 2003 and lives in Pendleton.

Deirdre Malarkey, Commissioner

Deirdre Malarkey graduated from Reed College and received her M.A. and Ph.D. from the University of Oregon. She has served previously on two state natural resource boards and on the Water Resources Commission and retired as a land use planner. Commissioner Malarkey was appointed to the EQC in 1999 and reappointed in 2003. Commissioner Malarkey lives in Eugene.

Ken Williamson, Commissioner

Ken Williamson is head of the Department of Civil, Construction and Environmental Engineering at Oregon State University and serves as Co-Director of the Center for Water and Environmental Sustainability. He received his B.S. and M.S. at Oregon State University and his Ph.D. at Stanford University. Commissioner Williamson was appointed to the EQC in February 2004 and he lives in Corvallis.

Judy Uherbelau, Commissioner

Judy Uherbelau is a graduate of Ball State University with a B.S. in Economics/Political Science. She received a J.D. from UCLA School of Law and currently works as an attorney with Thomas C. Howser, PC in Ashland. Judy served in the Peace Corps and the Oregon House of Representatives as well as numerous boards and commissions. Commissioner Uherbelau was appointed to the EQC in February 2005 and lives in Ashland.

Stephanie Hallock, Director

Department of Environmental Quality

811 SW Sixth Avenue, Portland, OR 97204-1390

Telephone: (503) 229-5696 Toll Free in Oregon: (800) 452-4011

TTY: (503) 229-6993 Fax: (503) 229-6124

E-mail: deq.info@deq.state.or.us

Jane Hickman, Interim Assistant to the Commission

Telephone: (503) 229-5555

Proposed Discussion Items for the dinner with Eastern Region staff
Wednesday, April 20, 2005 5:30PM
Riverfront Lodge

Issues Summary

Eastern Region Geographic Initiative

Eastern Region managers met March 28-29, 2005, to discuss options for geographic based initiatives in the region focused around the Water Quality Program's watershed approach. The intent is to base program decision-making and prioritization on geographic environmental needs.

WATER QUALITY

Lost/Klamath River TMDLs

DEQ continues to work with EPA Regions IX and X and the State of California on TMDLs for the Lost River subbasin. The Lost River is listed for dissolved oxygen, pH, nuisance algae, bacteria, and temperature. Any regulatory action related to water is likely to be contentious based on Klamath County's recent drought designation.

Central Oregon Lakes Blue/Green Algae

Recent monitoring in lakes in central Oregon has found high levels of blue/green algae at certain times of the year. These types of algae produce toxins that can be harmful to humans and animals if ingested. The US Forest Service has posted notices at lakes where algal growth has risen to critical levels. Local resort operators at affected lakes feel the notices are not warranted and are driving business away.

LaPine Groundwater

Information from the LaPine Demonstration Project has heightened concerns that continued development in South Deschutes County will result in increased levels of nitrate-nitrogen in shallow groundwater in the area. Shallow groundwater is the source of drinking water for most new developments in the area. The Department anticipates that a geographic rule at either the Department or County level will be developed that will require new and redeveloped properties to use septic systems that are designed to remove nitrate.

Perchlorate – Umatilla and Morrow Counties

Perchlorate is a manufactured salt that can interfere with thyroid hormone production leading to adverse health effects. It is used in explosives production (including bombs, flares, fireworks, matches, etc.) and is also found in some fertilizers and lubricating oils. It has been found at a number of sites around Northwestern Umatilla and Northern Morrow Counties, usually associated with military or manufacturing facilities. There is no drinking water standard for perchlorate, but EPA recently established a reference dose level that may lead to establishing a water standard. Some states have established action levels which range from 1 part per billion (ppb) to 20 ppb. Perchlorate has been found in low levels in Morrow and Umatilla Counties in concentrations ranging from 1 to 25 ppb. DEQ is working with EPA, the Oregon Department of Human Services (Health Division) and others to understand the distribution, extent, and possible sources of perchlorate in the region.

Subsurface Wastewater Treatment and Discharge

The state water quality standard for temperature, as well as other standards, is making it more and more difficult for municipal wastewater treatment facilities to discharge directly to surface waters. At least two cities in Eastern Oregon (Pendleton and Hermiston) are evaluating the possibility of discharging wastewater below the surface of the ground, but near the river, with the intent of getting some cooling and possibly other treatment in the soil/gravels prior to indirectly discharging back to the river. Pendleton has already done some preliminary testing with promising results. They are currently moving forward with a larger scale pilot test. Eastern Region staff are working with them to allow the testing and possibly long term permitting of this alternative. If this effort shows treated effluent can return to the river (and does not contaminate groundwater) with sufficient water quality, it will provide an alternative for the cities that is cheaper than other treatment alternatives and also keeps the flow in the river for fish and other beneficial uses.

**Proposed Discussion Items for the dinner with Eastern Region staff
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Riverfront Lodge**

Suction Dredge Mining

DEQ's Water Quality Division has been working on renewal of the 700-J General Permit for small suction dredges. There are many small scale (recreational) suction dredgers that operate in eastern Oregon primarily in the John Day and Powder Basins. Hearings on the draft permit have been held in Baker City as well as other locations on the west side of the state. Concerns have been raised by the operators because of the turbidity requirements of the draft permit. The Water Quality Division is currently re-drafting the permit to address the concerns while still providing adequate water quality protection. Very small dredges, those with hose diameters under four inches, may be exempted from the turbidity requirements as de minimus sources.

HAZARDOUS WASTE

Solid Waste/Hazardous Waste Impact on Columbia River Fisheries

The Confederated Tribes of the Umatilla Indian Reservation have expressed concerns over the impact Chemical Waste Management, Columbia Ridge Landfill, the Lockheed Martin Landfill in The Dalles, and the Roosevelt landfill in Washington, may have on Columbia River fisheries. They have also expressed their desire to exercise sovereign authority and become involved in the regulation of these and other sites to ensure their interests are not compromised. They will be sending a letter to Director Hallock to express their concerns.

SOLID WASTE

Household Hazardous Waste/Conditionally Exempt Generator Waste/Pesticide Waste Permanent Facilities

The Solid Waste Program has made an effort to assist with the planning and construction of permanent Household Hazardous Waste (HHW) collection facilities throughout the state as an alternative to periodic collection events. This has been done through the Solid Waste grant program by providing HHW planning and facility construction grants. Wasco, Hood River, and Sherman Counties completed a HHW plan and will build two permanent collection facilities which should be operational by 01/01/06. There is also a permanent HHW facility planned for Bend/Deschutes County. HHW Planning will be getting underway this year for the Baker/Union/Wallowa area and a draft HHW Plan has been developed for the Klamath Falls/Klamath County area which is currently under review.

Threemile Canyon Farms

There will be a tour of the dairy on Thursday. In the wake of the Mad Cow Disease (BSE) incident of 12/03, the Farm decided to join the USDA testing program for BSE. Because USDA requires that all dead animals greater than 2 years old go to a renderer, the Farm has discontinued mortality composting. They may start back up if the USDA testing program shows that there is no BSE in the United States. The Farm also received a \$1 million grant for studying the feasibility of operating a manure digester. Based on the study's results they have decided to go ahead with that project. Construction is estimated to cost \$22 million. A De-inked Fiber (paper sludge) pilot project for dairy cow bedding and composting feedstock is currently underway.

AIR QUALITY

Environmental Impacts from Power Plant Emissions – Umatilla and Morrow Counties

There are members of the public and some local government officials who feel there are cumulative environmental impacts from power plant emissions that are deleterious to the area around Umatilla County. Currently there are three natural gas fired power plants and one coal plant in the area. An additional large natural gas fueled facility is proposed on Tribal land located near Umatilla. One concern is how emissions from power plants could impact crops. There is not any data or evidence to suggest that crop damage has occurred in the area. It has been requested that a multi-agency (DEQ, ODA, OSU-Extension etc.) study on the issue involving stakeholders be conducted to determine how sensitive local common crops are to specific air

**Proposed Discussion Items for the dinner with Eastern Region staff
Wednesday, April 20, 2005 5:30PM
Riverfront Lodge**

pollutants (nitrogen oxides and sulfur oxides). DEQ and EPA have concluded that the air quality in the region meets the standards for such pollutants, however it may become necessary to conduct specific monitoring to measure current concentrations in the area. Funding for monitoring has not been identified.

Field Burning – Umatilla and Morrow Counties

Field burning of grass seed fields and wheat stubble continues to be an issue in the area. Umatilla County administers a rudimentary smoke management program for growers who choose to use field burning as part of their field management. Morrow County does not have a smoke management program. On occasion complaints are received from counties in Washington and from various individuals in Oregon. Smoke from field burning can impact the health of people and contribute to regional haze. Current programs in Washington are more restrictive than in Umatilla and Morrow Counties. DEQ and EPA are pressing for a more comprehensive smoke management program in the area but there is little movement in that direction from local farming interests and local government. Ultimately the program may be affected by the Regional Haze measures or by continued citizen complaints to DEQ and EPA. EPA is working with the Confederated Tribes of the Umatilla Indian Reservation to develop a smoke management plan with an implementation schedule of January 2007. Many would like a coordinated approach for smoke management in the area that includes the Tribes and local counties in both Oregon and Washington.

CLEANUP

North Ridge Estates – Klamath Falls

Following a July 2001 complaint, DEQ inspection revealed the presence of scattered, exposed asbestos-containing material at North Ridge Estates in Klamath Falls. This subdivision is the site of a former World War II U.S. Department of Defense Marine Barracks and the old Oregon Institute of Technology campus. Under a Mutual Agreement and Order signed in June 2002 by MBK Partnership (the subdivision's developer) and DEQ, MBK agreed to clean up asbestos-containing materials from the developed area. Approximately 50 tons of asbestos-containing material were collected and disposed of offsite pursuant to the MAO. In April 2003, after negotiations on further removal actions failed, DEQ referred the North Ridge Estates project to Region 10 United States Environmental Protection Agency (EPA), and requested that the EPA conduct necessary remedial actions unilaterally or assume a lead regulatory oversight role should MBK Partnership conduct work. EPA accepted DEQ's request. There have been several lawsuits based on asbestos contamination at North Ridge estates, including a suit brought by homeowners against the developer, a suit by the developer against the state and federal government to help fund necessary asbestos removal, and a suit brought by the Oregon Attorney General against the developers for racketeering. EPA recently issued a unilateral order requiring the developers to fund and conduct a study to determine the asbestos cleanup required to protect public health at the site. DEQ will continue to track progress and review reports associated with this site.

Directions to Port of Morrow / Riverfront Lodge for EQC Meeting
Boardman, Oregon
April 21 and 22, 2005

I-84 to Exit 164

Left on ~~Marine Drive~~ *Main St.*

Continue past Columbia Drive and railroad overpass

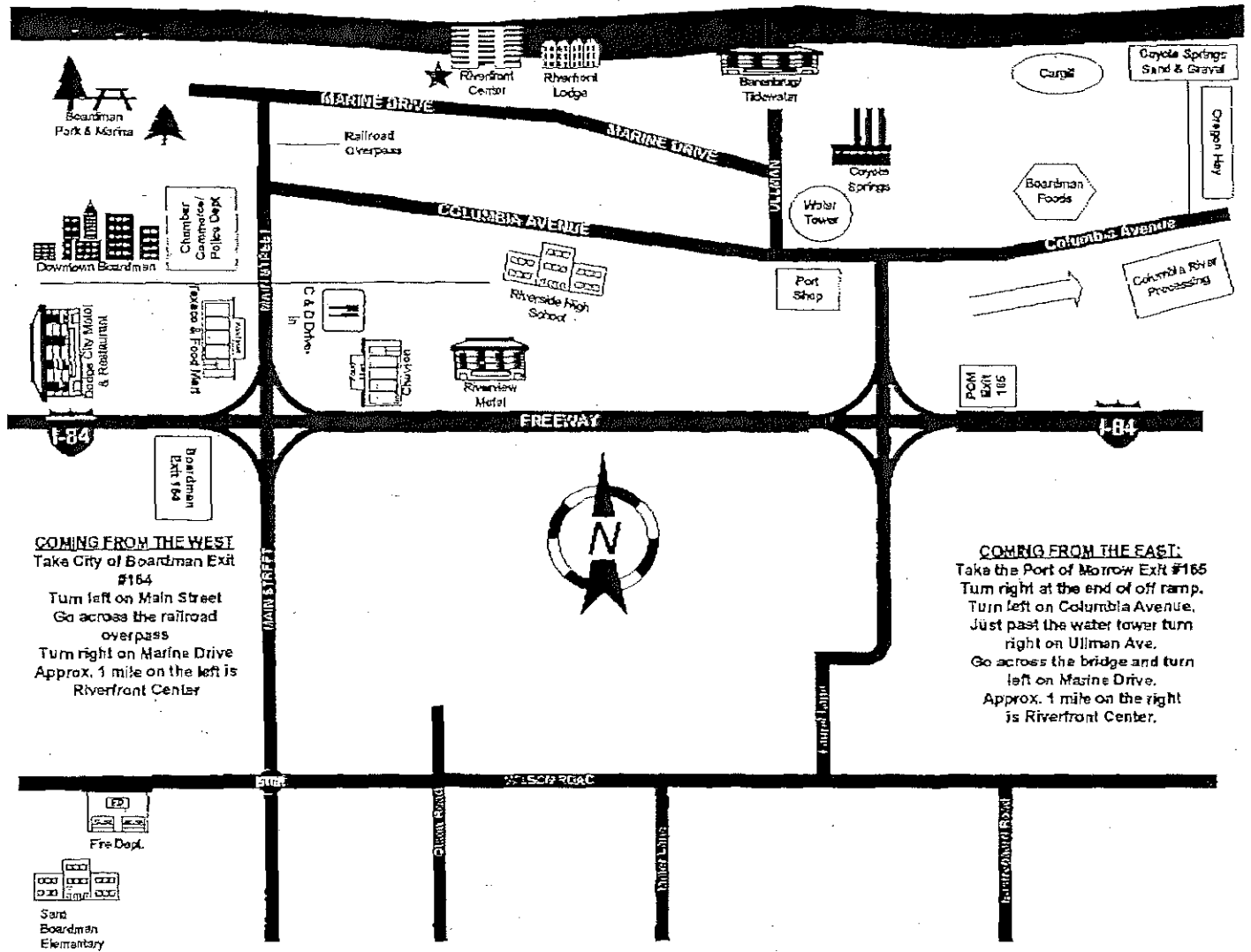
Right on Marine Drive

Approximately 1 mile on the left is Port of Morrow

Slightly farther on the left is Riverfront Lodge

Approximately 438 miles from Medford (6 hours 45 minutes)

Approximately 163 miles from Portland (2 hours 45 minutes)



COMING FROM THE WEST
 Take City of Boardman Exit #164
 Turn left on Main Street
 Go across the railroad overpass
 Turn right on Marine Drive
 Approx. 1 mile on the left is Riverfront Center

COMING FROM THE EAST:
 Take the Port of Morrow Exit #165
 Turn right at the end of off ramp.
 Turn left on Columbia Avenue.
 Just past the water tower turn right on Ullman Ave.
 Go across the bridge and turn left on Marine Drive.
 Approx. 1 mile on the right is Riverfront Center.



Oregon

Theodore Kulongoski, Governor

Department of Environmental Quality

Headquarters

811 SW Sixth Avenue
Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY (503) 229-6993

Coffee order / dinner orders

Sean will help the group on Wednesday

Camped coffee service due to dinner issues started on 4/20 & 4/21

April 14, 2005

Sasha Gordanier
Riverfront Lodge
PO Box 1306
6 Marine Drive
Boardman Oregon 97818

Re: Catering / dinners for Environmental Quality Commission meeting on April 20, 21 and 22, 2005

Dear Sasha,

Thanks for faxing the list of dinner orders to me on April 12. I reviewed it and have a few modifications to note. Maybe you could update it with the new information and send a revised version to me. That would be really helpful.

Dinner to be delivered to table at 5:30 4/20 + 4/21

I really appreciate your willingness to provide airports of coffee and pitchers of water for our meeting on April 21 and 22 at the Port of Morrow (2 Marine Drive.)

The coffee and water service (with cups, cream/sugar, stir sticks etc.) delivery should be made to the Sand Hollow Room at Port of Morrow. I have outlined times below that allow for delivery while our Commissioners are meeting in the larger room or while they are away so that they need not be disturbed during their meetings in Sand Hollow.

Thursday, April 21 Sand Hollow Room

Coffee and water delivery for 15 people: 7:30 AM

Coffee and water delivery for 10 people: 10:15 AM

Refresh if needed at 2:15 PM

Meeting ends at 5:00 PM

Friday, April 22 Sand Hollow Room

Coffee and water delivery for 15 people: 8:15 AM

Refresh if needed for 5 people at 10:15 AM

Meeting ends at Noon.



Page 2 of 2
Sasha Gordanier - Riverfront Lodge
EQC Meeting April 21 & 22, 2005

April 21 Meet and Greet – Riverfront Lodge Lounge

Deliver coffee and water service for approximately 40 people at 6:30 PM

(Our caterer JoAnn Tingué of Pudding on the Ritz Catering is bringing in cookies for this as well.)

I understand there will be a bartender on duty in case anyone wants to order a beverage aside from the coffee, but each person is responsible for paying his or her individual tab.

Again, Sasha, thanks for the follow up and for always being so helpful. Call me if you need anything at (503) 229-5990.

Talk to you soon,



Day Marshall

MARSHALL Day

From: MARSHALL Day
Sent: Tuesday, April 05, 2005 9:39 AM
To: MARSHALL Day; 'jtingue@eoni.com'
Cc: DEMAURO Bobbi
Subject: RE: Port of Morrow Meeting

*Catering order
 Pudding in the
 did great for
 everyone happy*

Joanne -

I haven't heard back from you since I sent the message below. Please confirm that the arrangement below works for you.

In addition to the items listed below, our group would like to have cookies for an evening meet and greet for about 40 people on April 21. Would you let me know the cost to provide this extra service? I'm sure cookie delivery along with the lunches and brownies at 10:30 would be fine if that simplifies things on your end.

At this point, here are the numbers I can tentatively confirm:

- 4/21 Breakfast: 16 people - \$6/pp (bkfst + brownies combined)
- 4/21 Lunch: 15 people - \$7.25/pp
- 4/21 Brownies: 10 people
- 4/21 Evening mtg: 40 people - \$25 - tray of cookies
- 4/22 Breakfast: 12 people - \$6/pp
- 4/22 Boxed lunch: 18 people - \$7.25/pp

*will provide
 \$25*

Thank you!

Day

Day Marshall
 DEQ Director's Office
 (503) 229-5990

-----Original Message-----

From: MARSHALL Day
Sent: Thursday, March 24, 2005 1:05 PM
To: 'jtingue@eoni.com'
Cc: DEMAURO Bobbi
Subject: RE: Port of Morrow Meeting

Hello there JoAnn!

The time of our Environmental Quality Commission meeting is quickly approaching and I am firming up attendance at our lunches and morning refreshments so I can give you numbers. Thank you for sending the suggested menu below. Everything sounds fabulous and I wish I could be there to enjoy it.

Because our morning sessions are crammed, I wonder if we can modify your original menu options for the AM refreshments. Rather than provide a second service in the morning, it would be great to just have one morning delivery for each day. I eliminated a few of the food items to simplify. Let me know if this works for you.

April 21, 2005

4/5/2005

Morning refreshments

7:30 delivery

Juice / water
Muffins w/honey butter
Breakfast breads w/ cream cheese and jam

Lunch

10:30 delivery
Salad, rolls and beverages as noted below

Afternoon refreshments

deliver with lunch at 10:30 if like

Brownies

April 22, 2005

Morning refreshments

8:15 delivery

Juice / water
Sweet breads
Vanilla yogurt with toppings
Cheese and crackers

Lunch

11:15 delivery

Boxed lunches as noted below

Please fill me in on any changes to the cost for each delivery.

Thanks again, JoAnne. I appreciate your help on all the details.

Day

Day Marshall
DEQ Director's Office
(503) 229-5990

-----Original Message-----

From: JoAnn Tingue [mailto:jtingue@eoni.com]
Sent: Tuesday, March 08, 2005 3:46 PM
To: MARSHALL Day
Subject: Port of Morrow Meeting

Oregon Department of Environmental Quality Commission
Port of Morrow
April 21 and April 22
1- 503 -229- 5990

April 21, 2005

Breakfast:

Juice/water
 Muffins with Honey Butter
 Breakfast bread with cream cheese and jam

Snack/mid morning

Fresh Fruit bowl
 (Grapes, bananas, slice oranges, apples)
 Cheese/crackers

Lunch

Large bowl of mixed greens
 (Build your own salad bar featuring)
 Cucumbers, onions, tomatoes, black olives, peppers, croutons, and capers and green peas
 Protein Choices: sliced Chicken breast, Feta cheese, bacon, chopped egg, sunflower seeds
 Choice of dressing: Blue Cheese, Ranch or House
 Hard sour dough rolls with butter
 Cookies
 Pop, water, juice

Pm snack

Brownies

April 22, 2005

Breakfast:

Vanilla yogurt
 Toppings: granola, brown sugar, blueberries
 Fresh sweet bread and butter
 Juice

Am snack

Cheese and crackers

Lunch

Box lunches: 15 lunches/including 2 vegetarian

Meat and Cheese sandwiches with lettuce and Cucumbers and tomatoes
 Fruit Salad
 Sun Chips
 Pickles/carrots
 Cookies
 Water/juice/pop

Diet Pepsi, Diet Coke and Diet Sprite
Day one (April 21, 2005 headcount of 10)
Day two (headcount of 15)

Total charges for breakfast (including am refreshments and pm snakes) \$ 6.00 per person

Total Charges for lunches: \$7.25 per person

Thanks, JoAnn

Information to foster Jane's continued sanity at the Boardman EQC meeting.

Port of Morrow: contact while you're there: Kathleen McGowan (541) 481-7678

Stephanie info: I have a few items for you to give to Stephanie when she arrives in Boardman on Thursday morning. She will arrive after the field trip and prior to the Exec Session. She has a 3-ring binder with all the EQC staff reports in it. You could just add these items so her binder. *please tell SH by Dir. Dialogue She has does not have the Oregonian article in it.*

Commission table: Each Commissioner will have a microphone. Make sure each Commissioner has a nameplate in front of them with their accompanying title. The nameplates are in the plastic container within the suitcase. Mark is the Chair and sits in the center of the Commission. The gavel is placed in front of Mark. (Lynn will not be present.)

Commissioner folders: Each Commissioner has a white folder. I wrote a name on each folder. Please put the white folder and a pencil (in the plastic container within the suitcase) at each Commissioner's place at the table.

Staff report table: Near the door of the Riverfront Room, there will be a table set up for the staff reports. Place the reports in order by agenda item. There is also a public comment form sign in the plastic container. Please put that on the table where people will see it first. Place the actual forms in front of the sign along with a few ballpoint pens (in the plastic container). If the public wants to request to speak before the Commission, they must fill out a form and bring it to you. Place any extra agendas and materials on this table as well.

Walls signs: We have signs to hang in the room or on the door of the room that remind folks to turn off cell phones, not use computers, etc. There are also signs that tell people when executive session is happening and when the regular meeting starts. Normally I put the executive session notices at the door to the room and the cell phone/computer signs inside the room where people in the gallery will see it.

Tape player: I think this is self-explanatory. The tapes are in the suitcase as is the tape recorder. The electrical cord for the tape recorder is in the end of the tape recorder box. Record all of Executive Session.

Recording the EQC meeting: Craig Hess of Martin Audio will record the entire Commission meeting and will be there to set up his sound system while the farm tour is going on. His number is (360) 425-7507.

Catering: Will be delivered to the Sand Hollow Room throughout the day. In general, only EQC, DEQ staff on travel status and Larry Knudsen will partake in the catered food. The food and beverages are kept in the Sand Hollow Room to discourage other folks from coming in and eating the food. See the chart for the people who have told me they

will eat lunch with the Commission or be a part of Executive Session. I have planned catering to include these people.

Contact information:

Coffee Service and water: Sasha at Riverfront Lodge (541) 481-6800.

Food and beverages with lunch: JoAnn Tingue at (541) 379-1527 (cell)

Delivery times: Thursday, April 21

7:30 delivery

Juice water/muffins/breakfast breads with cream cheese, butter, jam
(plates, napkins, cups, plasticware provided)

Coffee/water service for 15 pp

10:15 delivery

Coffee/water service for 10 pp

10:30 delivery

Salad, rolls and beverages

(plates, napkins, cups, plasticware provided)

Afternoon brownies, delivered with lunch – maybe open them up at breaktime.

2:15 delivery

Coffee/water –refresh as needed

Cookies for the Meet and Greet – delivered at lunchtime. These need to be taken to the restaurant lounge for the meet and greet with public officials Thursday night. Don't let the EQC break into them during the afternoon - :c)

Delivery times: Friday, April 22

8:15 delivery

Juice/water, sweet breads, vanilla yogurt with toppings, cheese and crackers

Coffee/water service for 15pp

10:15 delivery

Coffee/water refresh for 5 pp

11:15 delivery

Boxed lunches for tour

Dinners: We have dinner scheduled at the Riverfront Lodge at 5:30 Wednesday and Thursday nights. If the meeting on Thursday is going to run long, please call Sasha at the Riverfront Lodge to let her know. Otherwise, the restaurant will begin preparing food so

it is ready to be served at 5:30PM. She knows this is a possibility. I told her we will let her know by 4:30PM if at all possible. If we wind up being too cramped (more than 20 pp), Sasha is also prepared to move our group to the lounge upstairs. Each person will pay for their meal individually and file a travel expense reimbursement when they return to work. Everyone on the list has been apprised of that fact and Sasha knows we will need individual bills.

Meet and Greet: The time with public officials will take place in the lounge upstairs at 7:00PM April 21. This is a non-structured time for the EQC to mingle with local officials. We will have coffee/water and the cookie tray the JoAnne delivered earlier in the day. There is also a bartender on duty who can serve soda or whatever a person orders. If a person wants to order a beverage, they need to pay on their own.

Hotel rooms: I have included a list of everyone I am aware of who has a hotel room reserved. Each person will pay for their room individually and file a travel reimbursement form when they return to work. Everyone on the list has been apprised of that fact.

Other stuff as I think of it:

delayed check-out approved for Friday 4/22 until 12:30.
The hotel needs to strip the beds & clean, however, so everyone needs to pack their belongings & put them in the closet.
Please be courteous when returning to room so they don't have to clean again once we leave.

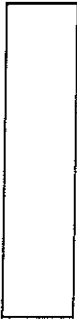
Environmental Quality Commission
Room Configuration

Room for 5 Commissioners to sit across comfortably. We like to have skirting around the outside of this table set up for privacy.

S
c
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e
n

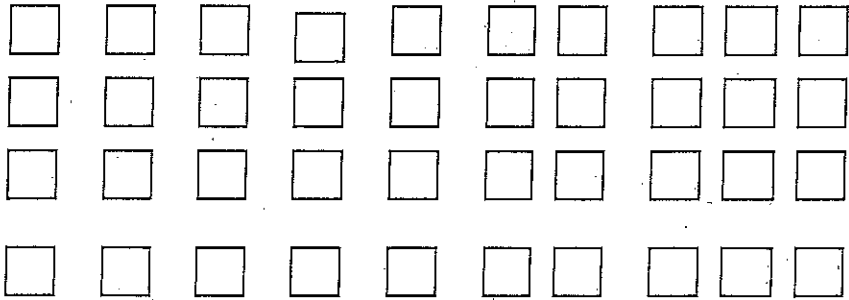
Projector
table (DEQ
will bring)

Room for 3
DEQ staff
to sit



Room for 3 - 4 people to sit briefly

Near the room entrance, we need a long table. We will place reports and documents for visitors to pick up there.
There also needs to be a table in the room for the sound man, Craig Hess. He brings all of his own equipment.



Theater style seating for 30 - 40

Arlington Tour

Bus

parking info

MARSHALL Day

From: DEMAURO Bobbi
Sent: Thursday, April 14, 2005 4:04 PM
To: MARSHALL Day
Subject: Bus Confirmations

I have reconfirmed the use of a school bus with Mid-Columbia Bus Company for the April 21st EQC tour of Three Mile Canyon Farms. It will arrive at the Port of Morrow offices at 8:45 a.m. (15 minutes early), for the tour departing at 9:00, and returning at 11:00.

Also - Rich Duval (from the HW program in Pendleton - He is primarily putting together the Chem Waste tour) has confirmed that Chem Waste Management will be providing a "cruiser" bus for their tour. The bus will be waiting at "The Mall" parking lot (center of town in Arlington) to pick up the passengers for departure at 1:00 p.m. on April 22nd. They will travel to Chem Waste (about 15 minutes out), then continue on for their facility tour. They will be returned to the parking lot around 3:00 pm, when the tour is complete.

To get from Boardman to Arlington:

Take I-84 West to Exit 137, Arlington. Veer right onto Beech Street, and turn left to "The Mall" parking lot.

Thanks, *R* *this info was added to the Master Agenda (w/ times).*
Bobbi

MARSHALL Day

From: MARSHALL Day
Sent: Thursday, March 24, 2005 12:10 PM
To: 'port@portofmorrow.com'
Cc: DEMAURO Bobbi
Subject: EQC Meeting April 21 and 22, 2005

*While we are there, on
 Elaine Vandecar contact is
 Port of Morrow Kathleen
 541 481-7678 MacGowan*

Hello Elaine.

The time of the EQC meeting is drawing near and I need to finalize a few items with you.

Bobbi DeMauro is our Eastern Region contact and has actually been to the Port's facility. I have cc'd her on this email because she is a key person for making sure all of this comes together for us. Please keep her in the discussion loop as we move forward. She has been to the building and said wonderful things about the facility.

*call Port #, transfer
 Sand Hollow room
 speakerphone*

Riverfront Lodge will bring coffee to the Commission meeting. We will have that delivered to the Sand Hollow room. It is not for the general meeting attendees, so keeping it in the side room is best.

I have attached a diagram of the room set up for the Commission meeting. Generally, the Commission, DEQ Director and legal staff and the people presenting each Commission agenda item sit in a U-shape. The visitors sit in theater style chairs. Additionally, we need a small table for a projector and a screen set up in the open part of the U-shape so the Commission and presenters can see it. DEQ will bring the projector to the meeting.

We have a number of documents to present to the Commission and copies of those are made available to visitors. Near the door to the room, (this can be outside of the room) we need a table set up to allow visitors to pick up these documents.

Now, hopefully Craig Hess of Martin Audio has contacted you. He is our sound technician for the meeting. He is bringing his own equipment to the meeting and will be setting up ahead of time.

I have also attached the latest draft agenda so you can see our the timeline we're working with.

Let me know if you have any questions.

Day

Day Marshall

Assistant to Stephanie Hallock and Paul Slyman

DEQ Director's Office

(503) 229-5990

marshall.day@deq.state.or.us



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

Eastern Region

700 SE Emigrant

Suite 330

Pendleton, OR 97801

(541) 276-4063 Voice/TTY

FAX (541) 278-0168

April 1, 2005

«Salutation» «First» «Last»

«Organization»

«Address»

«City», «State» «Zip»

RE: Environmental Quality Commission Meeting

Dear «Title» «Last»:

The Oregon Environmental Quality Commission (Commission) will hold its next regularly scheduled public meeting in Boardman on April 21 and 22, 2005.

On Thursday evening, April 21, the Commission will host a meeting to hear directly from local and tribal officials on challenges and opportunities related to air, water and land quality. The Commission encourages you to attend and share your ideas and concerns about environmental issues in Eastern Oregon. Stephanie Hallock, Director of the Department of Environmental Quality (DEQ), and DEQ staff, will also be on hand to hear from you. This public meeting will begin at 7:00 p.m. at the Riverfront Lodge Restaurant lounge, located at 6 Marine Drive, in Boardman.

To assist us in planning for seating, please RSVP to Bobbi DeMauro by Monday, April 11. You may phone her at (541) 278-4614, or toll-free in Oregon at 1-800-304-3513. If you prefer, you may e-mail her at demauro.bobbi@deq.state.or.us. Please indicate if you plan to attend and whether others will be attending with you. Kindly advise if you are unable to attend.

The Oregon Environmental Quality Commission is made up of five citizen members, appointed by the Governor to oversee the work of DEQ. The Commission adopts agency rules, sets policy, stays informed of agency actions, makes decisions on appeals of agency actions, and appoints the DEQ Director. Commission members are Chair Mark Reeve, Didi Malarkey, Lynn Hampton, Ken Williamson, and Judy Uherbelau.

While in Boardman, the Commission will hold regular public meetings on Thursday, April 21 starting at 1:00 p.m., and on Friday, April 22 starting at 9:00 a.m. These meetings will be held in the Riverfront Room at the Port of Morrow, 2 Marine Drive, in Boardman. Included with this letter is the meeting agenda.

We look forward to spending an evening with you. If you have any questions about the Commission meeting, please feel free to call me at (541) 278-4610.

Sincerely,

Joni Hammond
Administrator
Eastern Region

cc: Mark Reeve, Chair, EQC
Stephanie Hallock, Director



Boardman EQC Mailing List

First	Last	Title	Organization
Patrick	Bryson	Mayor	City of Adams
Jim	Greene	Mayor	City of Adrian
Carmen	Kontur-Gronquist	Mayor	City of Arlington
Mark	Seltmann	Mayor	City of Athena
Peter	Ellingson	Mayor	City of Baker City
F.E.	Glenn	Mayor	City of Boardman
Dale	Thompson	Mayor	City of Condon
Richard	Thew	Mayor	City of Cove
Richard	Winter	Mayor	City of Echo
Carmen	Gentry	Mayor	City of Elgin
Don	Shiple	Mayor	City of Fossil
Neil	Pattee	Mayor	City of Grass Valley
Lauren	Hartman	Mayor	City of Greenhorn
Tom	Isaacson	Mayor	City of Haines
Gordon	Kaesemeyer	Mayor	City of Halfway
Harry	Schuening	Mayor	City of Helix
Tim	VanCleave	Mayor	City of Heppner
Robert	Severson	Mayor	City of Hermiston
Donna	Rush	Mayor	City of Huntington
Joe	Combe	Mayor	City of Imbler
Marc	Bruno	Mayor	City of Ione
Don	Baxter	Mayor	City of Irrigon
Dale	DeLong	Mayor	City of Island City
Jake	Roe	Mayor	City of Jordan Valley
Colleen	Johnson	Mayor	City of LaGrande
John	Edwards	Mayor	City of Lexington
Floyd	Parrott	Mayor	City of Lonerock
Lewis	Key	Mayor	City of Milton-Freewater
Keifer	Davis	Mayor	City of Mitchell
John	Waldron	Mayor	City of Moro
Carrie	Crook	Mayor	City of North Powder
Diego	Castellanoz	Mayor	City of Nyssa
Leroy	Cammack	Mayor	City of Ontario
Phillip	Houk	Mayor	City of Pendleton
Virginia	Kames	Mayor	City of Pilot Rock
Nancy	Gover	Mayor	City of Richland
Clifford	Jett	Mayor	City of Rufus
Terry	Ingalls	Mayor	City of Spray
Thomas	McCann	Mayor	City of Stanfield
Sheri	Rogers	Mayor	City of Summerville
Jack	Colton	Mayor	City of Sumpter
Clint	Barber	Mayor	City of Ukiah

Boardman EQC Mailing List

First	Last	Title	Organization
David	Trott	Mayor	City of Umatilla
Deborah	Clark	Mayor	City of Union
Tina	Kandle	Mayor	City of Unity
Jim	Silence	Mayor	City of Vale
Karen	Kellogg	Mayor	City of Wasco
Barbara	Byerley	Mayor	City of Weston
Tim	Kerns	Commissioner	Baker County
Carl	Stiff	Commissioner	Baker County
Fred	Warner	Commissioner	Baker County
Frank	Bettencourt	Commissioner	Gilliam County
Dennis	Gronquist	Commissioner	Gilliam County
Laura	Pryor	Judge	Gilliam County
Dan	Joyce	Judge	Malheur County
Jim	Nakano	Commissioner	Malheur County
Lewis	Wettstein	Commissioner	Malheur County
Ray	Grace	Commissioner	Morrow County
Terry	Tallman	Judge	Morrow County
John	Wenholz	Commissioner	Morrow County
Steve	Burnet	Commissioner	Sherman County
Sherry	Kaseberg	Commissioner	Sherman County
Gary	Thompson	Judge	Sherman County
Dennis	Doherty	Commissioner	Umatilla County
William	Hansell	Commissioner	Umatilla County
Emile	Holeman	Commissioner	Umatilla County
John	Lamoreau	Commissioner	Union County
Colleen	MacLeod	Commissioner	Union County
Steve	McClure	Commissioner	Union County
John	Asher	Commissioner	Wheeler County
Ken	Bond	Commissioner	Wheeler County
Jeanne	Burch	Judge	Wheeler County
David	Nelson	Senator	Oregon Senate
Ted	Ferrioli	Senator	Oregon Senate
Greg	Smith	Representative	Oregon House of Representatives
Bob	Jenson	Representative	Oregon House of Representatives
Tom	Butler	Representative	Oregon House of Representatives
John	Dallum	Representative	Oregon House of Representatives
Ron	Wyden	Senator	US Senate
Gordon	Smith	Senator	US Senate
Greg	Walden	Representative	US House of Representatives
Antone	Minthorn	Mr.	Confederated Tribes - Umatilla Indian Reservation
Donald	Sampson	Mr.	Confederated Tribes - Umatilla Indian Reservation
Rick	George	Mr.	Confederated Tribes - Umatilla Indian Reservation

Boardman EQC Mailing List

First	Last	Title	Organization
Kathleen	Feehan	Ms.	Confederated Tribes – Umatilla Indian Reservation
Jennifer	Clark	Ms.	Bakeoven Watershed Council
Sue	Greer	Ms.	Bridge Creek & Mid John Day Watershed Councils
Duane	Pearson	Mr.	Bully Creek Watershed Coalition
Ron	McDermid	Mr.	Fulton & Gordon Canyons Watershed Council
Teri	McElroy	Ms.	Gilliam-East John Day Watershed Council
Jeff	Oveson	Mr.	Grande Ronde Model Watershed
Marty	Belshe	Mr.	Grass Valley Canyon Watershed Council
Krista	Coelsch	Ms.	Mack's Canyon & Pine Hollow/Jackknife WSC
Kelly	Wiedeman	Mr.	Malheur Watershed Council
Nate	Smith	Mr.	North Sherman County Watershed Council
Jennifer	Martin	Ms.	Owyhee Watershed Council
Vicki	Wares	Ms.	Powder Basin Watershed Council
Ron	Deutz	Mr.	Umatilla Basin Watershed Council
Brian	Wolcott	Mr.	Walla Walla Watershed Council
Doni	Clair	Ms.	Baker Valley, Burnt River & Keating SWCDs
George	Meyers	Mr.	Gilliam County SWCD
Lance	Phillips	Mr.	Malheur County SWCD
Janet	Greenup	Ms.	Morrow SWCD
Bill	Martin	Mr.	Sherman County SWCD
Phil	Walchli	Mr.	Umatilla County SWCD
Sarah	Hendrickson	Ms.	Union SWCD
Judy	Potter	Ms.	Wheeler SWCD
Jeff	Blackwood	Mr.	Umatilla National Forest
Ron	Rickman	Mr.	LUB GWMA Committee
Kent	Madison	Mr.	Critical Groundwater Task Force
Robert	Flournoy	Mr.	Oregon Chem Demil Citizens Advisory Commission
Kathryn	O'Meara-Shaw	Ms.	Oregon Chem Demil Citizens Advisory Commission
Mark	Bell	Mr.	Oregon Chem Demil Citizens Advisory Commission
Donna	Raines	Ms.	Oregon Chem Demil Citizens Advisory Commission
Susan	Jones	Ms.	Oregon Chem Demil Citizens Advisory Commission
Jeffrey	Wenholtz	Mr.	Oregon Chem Demil Citizens Advisory Commission
Chris	Brown	Mr.	Oregon Chem Demil Citizens Advisory Commission
Carla	McLane	Ms.	Morrow County Planning Dept
Burke	O'Brien	Mr.	Morrow County Public Works Dept
Howard	Moss	Mr.	Milton-Freewater Public Works Dept
Delphine	Palmer	Ms.	City of Milton-Freewater
Sandy	Macnab	Ms.	OSU Wasco/Sherman County Extension Service
Edward	Brookshier	Mr.	City of Hermiston
Larry	Lehman	Mr.	City of Pendleton
Larry	Clucas	Mr.	City of Umatilla
Rex	Mather	Mr.	City of Boardman

Boardman EQC Mailing List

First	Last	Title	Organization
Kathryn	Greiner	Ms.	City of Condon
Cal	Palmer	Mr.	Chemical Waste Management of the Northwest
Sam	Jiries	Mr.	Chemical Waste Management of the Northwest
Marvin	Padberg	Commissioner	Port of Morrow
Deane	Seeger	Commissioner	Port of Morrow
Larry	Lindsay	Commissioner	Port of Morrow
Daniel	Creamer	Commissioner	Port of Morrow
Jerry	Healy	Commissioner	Port of Morrow
Melisa	Drugge	Ms.	Greater Eastern Oregon Development Corporation
Marty	Myers	Mr.	Threemile Canyon Farms
Gary	Neal	Mr.	Port of Morrow
Kim	Puzey	Mr.	Port of Umatilla

→ sound system

Master Agenda - showing presenters and approximate timing of agenda items

About 2 1/2 hrs 3hr from Anthem 162.50 miles

Environmental Quality Commission Meeting April 20 - 22, 2005 Port of Morrow - River Front Room 2 Marine Drive, Boardman

Wednesday, April 20

Travel to Boardman, check into hotel: **Riverfront Lodge Hotel** (6 Marine Drive, Boardman). The hotel phone is (541) 481-6800 and fax is (541) 481-6801.

Dinner with Eastern Region staff to discuss local issues and DEQ's work at _____ (enter location) _____

Present
Dinner
to 2:30

5:00-6:00
Joni + top managers
ISPP
Paul

comm, SH, new MO

Thursday, April 21

8:30 - 9:00 Presentation on Three Mile Canyon Farm at the Port building at 2 Marine Drive, River Front Room

9:00 - 9:30 Travel on bus to the Farm, with microphone for discussion and Q & A

9:30 - 10:30 Tour composting operations

10:30 - 11:00 Travel back to the Port

11:00 - 12:45 Executive session and a working lunch in the Sand Hollow Room.

etc
SH
Joni
23-52 mgr.
EMT 34
MO replace
PS?

Paul - tentative attend - would to go? stay for all / only part?

1:00 - 4:00 Regular EQC meeting in the River Front Room

1:00 - 1:05 Approval of Minutes

1:05 - 2:15 Government to Government Dialogue with the Confederated Tribes of the Umatilla Indian Reservation: Oregon's Water Quality Toxics Standards and the Fish Consumption Rate, Paul Slyman, Holly Schroeder, Bob Baumgartner

2:15 - 2:45 Informational Item: Results of the Columbia River 2004 Spill Season, Holly Schroeder, Agnes Lut - WQ

2:45 - 3:00 Break

3:00 - 3:30 Informational Item: Results of Oregon's Coastal Coho Evaluation, Mary Abrams, Rick Hafele - LAB

3:30 - 4:00 Informational Item: Status of the Board of Forestry riparian rulemaking (include effects of M 37, if appropriate), Holly Schroeder, Koto Kishida - LAB

4:00 - 4:30 Informational Item: Oregon Solutions

5:30 Dinner at _____ (enter location/address) _____

15 pp no agenda SH, new MO, Jone possibly stay

7:00 Evening with local officials (Gary Neal, Port of Morrow manager will help lead discussion) _____ (enter location/address) _____

Dinner
to 7:00
local officials

Bobbi responsible
what where
possibly
restaurant
meeting room

Friday, April 22

9:00 - 11:00 Conclude regular EQC meeting at Port of Morrow, 2 Marine Drive, Boardman in the River Front Room

9:00 - 9:15 Director's Dialogue, Stephanie Hallock

9:15 - 9:45 Informational Item: Update on the Status of the Umatilla Chemical Agent Disposal Facility, Dennis Murphey

9:45 - 10:30 Informational Item: Status of DEQ efforts to reduce toxics in our environment, Mary Abrams, Fenix Grange

LAB

→ Grange don't know
→ LaSavando no sep. room

Master Agenda – showing presenters and approximate timing of agenda items

- 10:30 – 10:45 Public Forum
- 10:45 – 11:00 Commissioners' Reports

- 11:00 – 2:00 Tour Arlington Hazardous Waste Disposal Facility, meet with Chem Waste officials
Includes a working lunch

- 2:00 Travel home

*Jewett Jean 4/21
during Car to Arlington
since M way home -
Lynn - a van for her stuff
Toni Lynn ride with?*

Minutes are not final until approved by the Commission.

Oregon Environmental Quality Commission Minutes of the Three Hundredth and Twenty Fourth Meeting

February 3-4, 2005
Regular Meeting¹

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

Mark Reeve, Chair
Deirdre Malarkey, Member
Ken Williamson, Member

Thursday, February 3, 2005

Chair Reeve called the regular meeting to order at approximately 1:10 p.m., and introduced the Commission members, DEQ Director Stephanie Hallock, Assistant Attorney General Larry Knudsen, and Commission Assistant Mikell O'Mealy. Agenda items were taken in the following order.

A. Contested Case No. WQ/SW-WR-02-015 regarding William H. Ferguson

The Commission considered a contested case in which William H. Ferguson appealed a proposed order and \$5,400 civil penalty for causing pollution to waters of the state. Larry Knudsen, Assistant Attorney General, summarized the findings of fact in the proposed order and asked Commissioners to declare any ex parte contacts or conflicts of interest regarding the case. All Commissioners declared that they had no ex parte contacts or conflicts of interest. Richard Stark presented arguments on behalf of Mr. Ferguson and Jenine Camilleri, DEQ Environmental Law Specialist, Anne Price, DEQ Compliance and Enforcement Office Manager, and Lynn Perry, General Counsel for the Oregon Department of Justice, presented arguments on behalf of the Department.

Commissioners discussed a number of legal and technical issues related to the case with Mr. Stark, Ms. Camilleri and Mr. Knudsen. After considering the proposed order and findings of fact, Commissioner Malarkey moved that the EQC uphold the proposed order. Commissioner Williamson seconded the motion and it passed with three "yes" votes. Chair Reeve asked Mr. Knudsen to prepare the order for the Director's signature on the Commission's behalf.

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

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, briefed the Commission on the status of recent activities at the Umatilla Chemical Agent Disposal Facility. In August 2004, the Commission gave approval to start chemical weapon destruction at the facility, and Mr. Murphey reported that DEQ's Chemical Demilitarization Program continues close oversight of work at the facility.

¹ The staff reports for this meeting can be viewed and printed from DEQ's Web site at <http://www.deq.state.or.us/about/eqc/eqc.htm>. To request a copy to be sent by mail, contact DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204; phone: (503) 229-5990.

C. Director's Dialogue

Stephanie Hallock, DEQ Director, discussed current events and issues involving the Department and the state with Commissioners.

Friday, February 4, 2005

At 8:30 a.m., prior to the regular meeting, the Commission held an executive session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the DEQ².

D. Adoption of Minutes

The Commission reviewed draft minutes of the December 9-10, 2004, EQC meeting. Commissioner Williamson moved that the Commission approve the minutes as drafted. Commissioner Malarkey seconded the motion and it passed with three "yes" votes.

E. Informational Item: Oregon's Greenhouse Gas Reduction Strategy

The Commission talked with a number of state leaders about *Oregon's Greenhouse Gas Reduction Strategy*, which contains recommendations developed in late 2004 by Governor Kulongoski's Global Warming Advisory Group. Director Hallock introduced the speakers and stated that the recommendations would soon be presented to the Governor for his consideration. Several recommended strategies could affect DEQ if the Governor chooses to move forward with implementation. David Van't Hof, the Governor's Sustainability Coordinator, talked with the Commission about what Oregon and other West Coast states were doing to reduce greenhouse gases. Angus Duncan, President and CEO of the Bonneville Environmental Foundation, and Gail Achterman, Director of the Institute for Natural Resources, presented information on the advisory group's strategy and conclusions. Mike Grainey, Oregon Department of Energy Director, and his staff Sam Sadler and Justin Klure, briefed the Commission on the energy-related recommendations in the strategy. Andy Ginsburg, DEQ Air Quality Division Administrator, and David Allaway, DEQ Solid Waste Analyst, described the recommendations related to motor vehicles, solid waste reduction and landfills.

Commissioners stated their strong interest in supporting DEQ's efforts to help reduce greenhouse gases, and commended all of the partners involved. Director Hallock stated that the Department would report back to the Commission after the Governor has announced his support for the recommended strategies, to discuss DEQ's role and needed resources in greater detail.

Public Forum

At approximately 11:30 a.m., Chair Reeve asked whether any members of the audience wished to provide public comment to the Commission. The following people testified.

Tim Spencer, DEQ Northwest Region Environmental Engineer, introduced Elise Smith and Susan Cook, who formed a citizen activist group in response to concerns about the Cobb's Quarry landfill redevelopment project near their Beaverton neighborhood. Mr. Spencer described the work done by Ms. Smith and Ms. Cook to research methane problems at the landfill and help the DEQ develop needed rules to protect public health and the environment. Mr. Spencer praised Ms. Smith and Ms. Cook for their leadership. On behalf of the Commission and the Governor, Chair Reeve thanked Ms. Smith and Ms. Cook for their work, and Director Hallock presented each of them with a certificate of appreciation.

Dona Hippert, representing the Northwest Environmental Defense Center (NEDC), expressed concerns about air pollution from the proposed Owens Corning facility in Gresham, and described the importance of public participation in the permitting process for the facility. Ms. Hippert encouraged the Commission to pay close attention to the issues raised and to public concerns. Chair Reeve thanked her for her comments.

² The executive session was held pursuant to ORS 192.660(1)(h).

F. Rule Adoption: Incorporation of National Emission Standards for Hazardous Air Pollutants, revisions of New Source Performance Standards, and adoption of Title V Permitting Regulation Amendments

Andy Ginsburg, DEQ Air Quality Division Administrator, and Jerry Ebersole, DEQ Air Quality Specialist, proposed minor changes to the National Emission Standards for Hazardous Air Pollutants (NESHAPs), New Source Performance Standards (NSPSs), and the Air Quality Title V program that DEQ implements. Mr. Ginsburg stated that NESHAPs control emissions of hazardous air pollutants from specific types of emission sources (i.e. pulp and paper mills and chromium electroplaters) and implement the requirements of section 112 of the Clean Air Act. NSPSs control emissions from types of emission sources (i.e. bulk gasoline terminals and landfills) that EPA determines "cause, or contribute significantly to, air pollution" as directed by section 111 of the Clean Air Act. Title V of the Clean Air Act requires each state to develop a comprehensive operating permit program for major industrial sources of air pollution. Mr. Ebersole explained that the proposed changes would update state rules to reflect recent changes in the federal programs and to ensure consistency between state and federal standards.

Commissioners discussed the proposed rules with Mr. Ginsburg and Mr. Ebersole. After consideration, Commissioner Malarkey moved that the EQC adopt the proposed changes with minor corrections. Commissioner Williamson seconded the motion and it passed with three "yes" votes.

G. Commissioners' Reports

Commissioner Malarkey reported that she recently attended a Southern Willamette Valley Groundwater Management Area meeting and witnessed significant progress and collaboration within the group. Commissioner Malarkey commended the DEQ staff involved in this project.

Commissioner Williamson expressed his concern for the potential impacts of global warming in Oregon and the Pacific Northwest.

Chair Reeve stated that he shared Commissioner Williamson's concerns, and he reiterated his desire to support the DEQ in working to reduce the release of greenhouse gases.

Director Hallock suggested that the Commissioners consider volunteering to participate in the next Global Warming Advisory Group that will be convened by the Governor's office this year. She stated that she will keep them informed of the state's progress on greenhouse gas reductions.


Chair Reeve adjourned the regular meeting at approximately 1:30 p.m.

At 1:45 p.m., the Commission held an additional executive session consult with counsel concerning legal rights and duties regarding current and potential litigation against the DEQ³. The session ended at approximately 3:00 p.m.

³ The executive session was held pursuant to ORS 192.660(1)(h).

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 31, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director 
Subject: Agenda Item B, Informational Item: Results of the Columbia River 2004 Spill Season
Holly Schroeder, Agnes Lut
April 21, 2005 EQC Meeting

Purpose of Item The purpose of this informational item is to provide the Environmental Quality Commission (EQC) with information on the 2004 spill season in the Lower Columbia River dams as it relates to the Total Dissolved Gas (TDG) waivers issued to U.S. Army Corp of Engineers (ACOE) and U.S. Fish and Wildlife Service (USFW). The EQC granted both parties multi-year waivers that expire in 2008.

Background TDG is the result of small air bubbles becoming dissolved in water. This results from hydrostatic pressure in the stilling basin at the base of the spillway of a dam. Water is spilled for one of two reasons:

1. because there is more water in the river than can be held behind the dam (involuntary spill); or
2. as a means of assisting downstream migrating salmonids to pass a dam (fish passage spill).

The State standard for TDG is 110 percent of saturation relative to atmospheric pressure. This standard was established to protect aquatic life, which can be adversely impacted by high levels of TDG. Effects of TDG on fish are akin to the bends (or nitrogen narcosis) in humans. At very high levels, TDG results in bubbles in eyes and body tissues and can be lethal.

For many years, the EQC has been in the position of balancing the risks posed by high levels of TDG with the benefits of spill for fish passage. The result is a waiver to the State standard, allowing TDG levels to rise to 120 percent of saturation in the tailrace of the spilling dam, and 115 percent in the forebay of the next downstream dam. At no time is TDG to exceed 125 percent for more than two hours in 24.

The EQC granted waivers to the ACOE and USFW at the above levels until 2008. The EQC granted the waivers based on the very low incidence of gas

bubble trauma detected from extensive biological monitoring since 1995, and in recognition of the need for dams to spill for the purpose of fish passage to assist out-migrating threatened and endangered salmon smolts. The ACOE regulates spills in accordance with the National Marine Fisheries Services Biological Opinion. The spill season begins in March and ends August 31. The ACOE and USFW waivers are interrelated in that they provide spill to increase the juvenile salmonid passage and survival at the mainstem Columbia River dams. (See Attachments A and B for the ACOE and USFW waivers, respectively. Attachment C is the Oregon administrative rule relating to the TDG water quality standard.)

The waivers require the ACOE and USFW to submit a report to the EQC each year summarizing the spill seasons activities and TDG levels at each Lower Columbia River Dam. This informational item summarizes the data provided by ACOE and USFW. A map of the Columbia River Basin Reservoir system is provided in Attachment D.

2004 Spill Season Report **2004 Spill Season TDG Report Summary from the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service**

Below are summaries of spill activities from each agency. For a technical summary, see Attachment E.

Summary of Spill from the U.S. Army Corps of Engineers:

The ACOE waiver covers the period from April 1 to August 31 to assist out-migrating threatened and endangered salmon smolts. The ACOE waiver is applicable to Bonneville, The Dalles, John Day, and McNary dams.

a) flow and runoff descriptions for 2004 spill season:

The 2004 operating year began with average Canadian reservoir storage and normal precipitation, but runoff due to snowmelt was below average. This latter condition resulted in Columbia River flows being below average as measured at The Dalles Dam. This condition decreased the amount of spill available for fish passage purposes.

b) spill quantities and durations:

Due to lower than average flow conditions and the inability to provide for necessary spill, ACOE began the transport of fish in late June at McNary Dam, though some spill occurred through August. Spill for fish passage was formally discontinued early at McNary Dam, but continued until August 31 at Bonneville, The Dalles, and John Day dams.

c) quantities of water spilled for fish versus spill for other reasons:

Involuntary spill occurred seven times at McNary Dam. Two of the involuntary spills were caused by excessive river flows at this dam resulting from increased

flow from the rapid snowmelt and increase in precipitation during the spring. The other five exceedances were associated with bulk spill patterns to increase river flows that help decrease river temperatures.

The Bonneville Dam spill level fluctuated during the spill season to protect chum redds between November 13 through May 31, 2004, and to allow for fish passage during the summer. Spill varied due to varying river flows, spill for fish passage, and a passage test conducted by ACOE and USFW. Evaluations from this test will not be available for at least three years, when the adult fish return.

d) data from the physical and biological monitoring programs, including incidences of gas bubble disease:

The ACOE physical monitoring of TDG during the 2004 spill season recorded 50 exceedances of Oregon's TDG waiver. McNary Forebay exceeded the TDG standard most often, with 23 incidences. Exceedances of the high 12-hour average of TDG occurred during both voluntary and involuntary spills for fish passage, dam capacity, flood control, increased river temperatures, and cumulative effects from upstream dam spill TDG levels. The highest Lower Columbia River TDG reading occurred in the tail water of McNary Dam, at 125.6%. The dam has difficulty accommodating incoming flows from the mid-Columbia and the Snake River.

As required by the waiver, the ACOE notified the Department when an exceedance of the waiver occurred and actively mitigated for increased TDG in the river. Mitigation included decreasing the amount of spill or terminating spill in order to maintain TDG levels below the waiver limits. The Department does not issue Notices of Noncompliance for these exceedances if the ACOE follows provisions in the waiver to notify the Department and takes immediate mitigation actions to reduce TDG levels.

The ACOE biological monitoring during spill included sampling of 8,016 subyearling and yearling Chinook and steelhead to determine the effects of spill and incidence of gas bubble trauma. Sampling occurred two days per week at Bonneville and McNary dams during the duration of the spill season. An insignificant number of fish were found with gas bubble disease, three out of 8,016 juvenile fish examined. There were no detections of severe fin gas bubble trauma in the fish examined during the 2004 spill season.

e) progress on implementing the measures contained in the Lower Columbia River Total Dissolved Gas TMDL:

The ACOE has specific TDG implementation measures outlined in the 2002 Lower Columbia River TDG TMDL. In January 2004, construction of the Bonneville Powerhouse 2 Corner Collector at Bonneville Dam was completed. This structure was operational during March through August. The corner collector is designed to move water from the ice/trash sluiceway into the

tailrace. It is also used to pass fish, which allows for decreased spill from Bonneville Dam. While the corner collector does generate TDG, it is significantly lower than that generated from spillway spill.

Completion of the Spillway Guide Divider Wall at The Dalles Dam was completed prior to April 2004. The wall reduces the lateral flow in the spillway basin, ensures that eddies do not form in the spillway, forces the water to flow downstream, and allows the fish to travel downstream quickly and thereby avoid predators. As a result, fish mortality has decreased.

Additional ACOE TMDL implementation actions are presented in Attachment F.

Summary of Spill from the U.S. Fish and Wildlife Service:

The USFW waiver is applicable for a continuous 10-day period in March to assist out-migrating Spring Creek Hatchery tule fall Chinook smolts through Bonneville Dam.

The spill at Bonneville Dam provided passage for about 7.5 million tule fall Chinook juvenile salmonids in March. Water quality data showed that fish passage spill TDG levels were below Oregon's TDG numeric criteria of 110%.

The USFW collected and examined 112 fish for signs of gas bubble trauma during the March spill. There was no incidence of gas bubble trauma to any of the sampled fish.

Conclusion:

The TDG waiver is critical in allowing fish passage past the Lower Columbia River Dams. ACOE and USFW are staying in compliance with their waivers with minimal TDG exceedances and no significant impact from TDG to the fisheries. The Department supports the continued use of the waiver process.

**Upcoming
Issues**

Differences between Washington and Oregon TDG waivers

State environmental agencies in Washington and Oregon and operational agencies (ACOE and Bonneville Power Administration) have been evaluating the most appropriate location to monitor TDG below Bonneville Dam. Currently, the Oregon waiver requires monitoring at Camas/Washougal, which is 18 miles below the dam. There is a location at Cascade Island which would enable monitoring near the edge of the aerated zone (as recommended in the TDG TMDL). The Washington Department of Ecology is currently preparing its TDG waiver, and is expected to utilize this monitoring point. The Department supports Washington's position on the monitoring point change and is staying actively engaged in the development of Washington's waiver. If

Washington does change the monitoring point, then the Department may need to return to the EQC with an amendment to our waivers to ensure that the two waivers are compatible. The Department estimates that action regarding the compliance monitoring point downstream of Bonneville Dam could occur as early as the next EQC meeting in June or as late as 2007 when the current waivers expire. The Department will provide updates to the EQC as requested.

Washington State's current and proposed TDG water quality criteria are available in Attachment G.

Next Steps

ACOE and the USFW will provide the Department and EQC with the next annual TDG and Spills report by January 1, 2006. In addition, it may be necessary for the Department and EQC to alter the TDG waivers to reflect a change in the location of the compliance point downstream of Bonneville Dam, to be more closely aligned with Washington's waiver.

EQC Involvement

EQC involvement will be needed in 2007 pending expiration of both TDG waivers in 2008; both the ACOE and USFW are expected to petition the EQC for a joint TDG waiver at that time.

EQC involvement may also be required if the compliance point below Bonneville Dam needs to be changed prior to 2007.

Attachments

- A. EQC Order Approving the U.S Army Corps of Engineer's Request for a Variance to the State's Total Dissolved Gas Water Quality Standard
- B. EQC Order Approving U.S. Fish and Wildlife Service's Request for a Variance to the State's Total Dissolved Gas Water Quality Standard
- C. Oregon Administrative Rule Relating to the Total Dissolved Gas Water Quality Standard
- D. Map of Columbia River Basin Reservoir System
- E. Technical Summary of 2004 Spill Season Quantities and Durations
- F. U.S. Army Corps of Engineers TDG TMDL Implementation Summary
- G. Washington State's Total Dissolved Gas Water Quality Criteria, Current and Proposed

Available Upon Request

1. U.S. Army Corps of Engineers 2004 Dissolved Gas and Water Temperature Monitoring Report
2. U.S. Fish and Wildlife Gas Supersaturation Monitoring Report for Spill Below Bonneville Dam


3. Total Maximum Daily Load (TMDL) for the Lower Columbia River
Total Dissolved Gas, September 2002

Approved:

Section:

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Division:

A handwritten signature in black ink, appearing to read "Agnes Lut", written over a horizontal line.

Report Prepared By:

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Order Approving the U.S Army Corps of Engineer's Request for a Variance to the State's Total Dissolved Gas Water Quality Standard

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In the matter of the U.S. Army Corps of Engineers' request to spill water to assist out-migrating threatened and endangered salmon smolts ((ORDER (((

WHEREAS the Department of Environmental Quality received a request from the U.S. Army Corps of Engineers dated December 23, 2002, to adjust the Total Dissolved Gas Standard as necessary to spill water over McNary, John Day, The Dalles and Bonneville Dams on the Lower Columbia River to assist out-migrating threatened and endangered salmon smolts, for the period from April 1 to August 31; and

WHEREAS the application sought approval for multiple years; and

WHEREAS the public was notified of the request on January 15, 2003, and given the opportunity to provide testimony at 10:00 a.m. on February 19, 2003 and the opportunity to provide written comments until 5:00 p.m. on February 19, 2003; and

WHEREAS the Environmental Quality Commission met on March 11, 2003 and considered the request, justification and public comment.

THEREFORE the Environmental Quality Commission orders as follows:

1. Acting under OAR 340-41-205, 445, 485 and 525(2)(n), the Commission finds that:
 - (i) failure to act will result in more salmonid passage via hydroelectric dam turbines. Estimated mortalities from fish passing through turbines is between 10 and 15 percent. Fish passing over spillways as a result of spill experience two to three percent mortality;
 - (ii) the balance of risk of impairment to migrating salmonids, resident fish, and other aquatic life due to elevated dissolved gas levels needs to be balanced against migrating juvenile salmonid mortality from turbine

passage. Resident fish and aquatic invertebrates in the Columbia River downstream of Bonneville Dam were monitored by NMFS for signs of gas bubble disease in 1993, 1994, 1995, 1996, 1997 and 1998. There was a low incidence of gas bubble disease (less than one percent) in resident fish examined in 1993 and 1995 while in 1994, 1997 and 1998 none of the fish observed had signs of gas bubble disease. There were no signs of gas bubble disease observed in the aquatic invertebrates examined. Signs of gas bubble disease were prevalent in 1996 but this was a high flow year with large volumes of involuntary spill and total dissolved gas levels above 115 percent in the forebays and 120 percent in the tail races of dams. There is a low incidence of gas bubble disease in migrating juvenile and adult salmonids when the total dissolved gas levels are at or below 115 percent in the dam forebays and 120 percent in the tailraces. The low incidence of gas bubble disease observed has been regarded as a low risk for mortality from gas bubble disease. Total dissolved gas levels of between 130 to 140 percent from involuntary spill, resulted in an increased incidence of gas bubble disease and is regarded as an increased risk of mortality from gas bubble disease. Given the past monitoring of gas bubble disease, the levels requested in this petition seem to be a reasonable balance between increased survival due to reduced turbine mortality and the risk of mortality from gas bubble disease;

- (iii) The Corps has submitted a physical monitoring plan. Physical monitoring will be conducted at Camas/Washougal, and the Bonneville Dam forebay and in the forebay and tailraces of McNary, John Day, and The Dalles Dams. Hourly data will be available on the Corps' Internet World Wide Web pages. Implementation of the physical monitoring plan will ensure that data will exist to determine compliance with the standards for the voluntary spill program; and
- (iv) The Corps has submitted a biological monitoring plan. Juvenile salmonids will be collected at Bonneville and McNary Dams and examined for signs of gas bubble disease on non-paired fins, eyes, and lateral lines.

2. The Environmental Quality Commission approves a modification to the Total Dissolved Gas standard for spill over McNary, John Day, The Dalles and Bonneville Dams on the Lower Columbia River, subject to the following conditions:

- (i) a revised total dissolved gas standard for the Columbia River for the period from midnight on April 1 to midnight on August 31;
- (ii) the revised criteria will apply for 2003, 2004, 2005, 2006 and 2007;
- (iii) a total dissolved gas standard for the Columbia River of a daily (12 highest hours) average of 115 percent as measured in the forebays of

McNary, John Day, The Dalles, and Bonneville Dams and at the Camas/Washougal monitoring stations;

- (iv) a cap on total dissolved gas for the Columbia River during the spill program of 120 percent measured in the tailraces of McNary, John Day, The Dalles, and Bonneville Dams' monitoring stations, based on the highest 12 highest hourly measurements per calendar day; and
- (v) a cap on total dissolved gas for the Columbia River during the spill program of 125 percent, based on the highest two hours during the 12 highest hourly measurements per calendar day during these times;
- (vi) a requirement that if 15 percent of the juvenile fish examined show signs of gas bubble disease in their non-paired fins where more than 25 percent of the surface area of the fin is occluded by gas bubbles or that contra-indicatory evidence suggests that fish are being harmed, the Director will terminate the variance; and
- (vii) a requirement that the Corps provide written notice to the Department within 24 hours of any violations of the conditions in the variance as it relates to voluntary spill. Such notice shall include actions proposed to reduce total dissolved gas levels or the reason(s) for no action;
- (viii) no later than December 31 for each year of this variance, the Corps shall provide a written report to the Department detailing the following:
 - a) flow and runoff descriptions for the spill season;
 - b) spill quantities and durations;
 - c) quantities of water spilled for fish versus spill for other reasons for each project;
 - d) data from the physical and biological monitoring programs, including incidences of gas bubble disease;
 - e) progress on implementing the measures contained in the Lower Columbia River Total Dissolved Gas TMDL.
- (ix) the Corps shall provide the Commission with an annual written report and, if requested the Corps shall appear before the Commission to report on any of the above matters, or such other pertinent matters relating to total dissolved gas as the Commission may determine;
- (x) the Commission reserves the right to terminate or modify this variance at any time during its currency.

Dated: _____

ON BEHALF OF THE COMMISSION

Director

Order Approving U.S. Fish and Wildlife Service's Request

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

In the matter of the U.S. Fish and Wildlife Service's request to spill water to assist out-migrating Spring Creek Hatchery salmon smolts ((ORDER ((

WHEREAS the Department of Environmental Quality received a request from the U.S. Fish and Wildlife Service dated October 2, 2003, to adjust the Total Dissolved Gas Standard as necessary to spill water over Bonneville Dam on the Columbia River to assist out-migrating Spring Creek Hatchery tule fall Chinook smolts, for a ten-day period in March 2004;

WHEREAS the public was notified of the request on October 31, 2003, and given the opportunity to provide testimony at 10:00 p.m. on December 1, 2003, and the opportunity to provide written comments until 5:00 p.m. on December 3, 2003; and

WHEREAS the Environmental Quality Commission met on February 6, 2004 and considered the request, justification and public comment.

THEREFORE the Environmental Quality Commission orders as follows:

1. Acting under OAR 340-41-205(2)(n)(B), the Commission finds:
 - (i) failure to act will result in more salmonid passage via hydroelectric dam turbines. Estimated mortalities from fish passing through turbines is between 11 and 15 percent. Fish passing over spillways as a result of spill experience two to three percent mortality;
 - (ii) the balance of risk of impairment to migrating salmonids, resident fish, and other aquatic life due to elevated dissolved gas levels needs to be balanced against migrating juvenile salmonid mortality from turbine passage. Resident fish and

aquatic invertebrates in the Columbia River downstream of Bonneville Dam have been monitored for signs of gas bubble disease since 1993. A total of 225 fish were examined in 2002. Of these 0.3 percent (one fish) showed signs of gas bubble disease. This fish exhibited signs of the lowest rank. No signs were observed in aquatic macroinvertebrates. Low incidences, as reported above, were detected in migrating juveniles and returning adults when total dissolved gas levels were within waiver limits. Higher levels of total dissolved gas saturation resulting from involuntary spill have resulted in increased incidence of gas bubble disease detected. Given data from past monitoring, at the levels requested, there appears to be a reasonable balance between increased survival due to avoidance of turbine and bypass system mortalities;

- (iii) the U.S. Fish and Wildlife Service has submitted a physical monitoring plan. The U.S. Geological Survey will conduct physical monitoring at the Bonneville Dam forebay, and at Camas/Washougal. Hourly data will be posted electronically on the U.S. Army Corps of Engineers' Internet World Wide Web pages. Implementation of the physical monitoring plan will ensure that data will exist to determine compliance with the standards for the voluntary spill program; and
- (iv) the U.S. Fish and Wildlife Service has not submitted a biological monitoring plan. In order to satisfy this finding, the U.S. Fish and Wildlife service should collect juvenile salmonids and resident fish with a beach seine downstream from Bonneville Dam and examine them for signs of gas bubble disease on non-paired fins and lateral lines. Based on evidence from previous years, few signs of gas bubble disease are expected. The sampling will, therefore be confined to two non-successive days during the ten-day spill period. No examinations of gill lamellae will occur this year due to the variability of results and increased risk to fish to due handling for this examination.

2. The Environmental Quality Commission approves a modification to the Total Dissolved Gas standard for spill over Bonneville Dam subject to the following conditions:

- (i) a revised total dissolved gas standard for Bonneville Dam on the Columbia River for a continuous ten-day period in March 2004, 2005, 2006 and 2007;
- (ii) a total dissolved gas standard for Bonneville Dam of a daily (12 highest hours) average of 115 percent as measured at the Camas/Washougal monitoring station;
- (iii) a further modification of the total dissolved gas standard at Bonneville Dam to allow for a daily (12 highest hours) average of 120 percent as measured at tailrace monitors below the dam;

- (iv) a cap on total dissolved gas for Bonneville Dam during the spill program of 125 percent, based on the highest two hours during the 12 highest hourly measurements per calendar day;
- (v) if *either* 15 percent of the fish examined show signs of gas bubble disease in their non-paired fins, *or* five percent of the fish examined show signs of gas bubble trauma in their non-paired fins where more than 25 percent of the surface area of the fin is occluded by gas bubbles, whichever is less, the Director will halt the spill program; and
- (vi) the U.S. Fish and Wildlife Service is to incorporate the following conditions into its program:
 - a) incorporation of a biological monitoring program to be performed on not less than two non-successive days during the spill program. Resident and migrating fish shall be collected by beach seining, and be examined in their fins and lateral; lines for signs of gas bubble trauma;
 - b) written notice must be furnished to the Department within 24 hours of a violation of the conditions of this waiver as it relates to voluntary spill. Such notice will include an explanation of the reasons for the violation, actions taken to resolve the situation, or if no action is taken, the reasons for no action;
 - c) provision of a written report of the each year's spill program for the Spring Creek National Fish Hatchery release. Such report is to be received by the Department no later than December 31 of each year; and
 - d) application for any waiver beyond 2007 should be coordinated with the U.S. Army Corps of Engineers and should be submitted as a single application on behalf of the federal government.

Dated: _____

ON BEHALF OF THE COMMISSION

Director

Oregon Administrative Rule Relating to the Total Dissolved Gas Water Quality Standard

Oregon's Water Quality Standards are contained in Oregon Administrative Rules (OAR) 340, Division 41. The standards relevant to the total dissolved gas (TDG) TMDL [OAR 340-041-0205(2)(n)] are:

- (A) The concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed 110 percent of saturation, except when stream flow exceeds the ten-year, seven-day average flood. However, for Hatchery receiving waters and waters of less than two feet in depth, the concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection shall not exceed 105 percent of saturation;
- (B) The Commission may modify the total dissolved gas criteria in the Columbia River for the purpose of allowing increased spill for salmonid migration. The Commission must find that:
 - (i) Failure to act would result in greater harm to salmonid stock survival through in-river migration than would occur by increased spill;
 - (ii) The modified total dissolved gas criteria associated with the increased spill provides a reasonable balance of the risk of impairment due to elevated total dissolved gas to both resident biological communities and other migrating fish and to migrating adult and juvenile salmonids when compared to other options for in-river migration of salmon;
 - (iii) Adequate data will exist to determine compliance with the standards; and
 - (iv) Biological monitoring is occurring to document that the migratory salmonid and resident biological communities are being protected.
- (C) The Commission will give public notice and notify all known interested parties and will make provision for opportunity to be heard and comment on the evidence presented by others, except that the Director may modify the total dissolved gas criteria for emergencies for a period not exceeding 48 hours;
- (D) The Commission may, at its discretion, consider alternative modes of migration.

Technical Summary of 2004 Spill Season Quantities and Duration

U.S. Army Corps of Engineers:

a) *flow and runoff descriptions for 2004 spill season:*

Columbia River flows at The Dalles Dam remained below average at 86% of average flows for the 2004 water year (October, 2003 to September, 2004). 2003 flows were lower, at 78% of average. Precipitation was normal for the 2004 water year, yet runoff due to snowmelt was below average. This latter condition resulted in Columbia River flows that were below average as measured at The Dalles Dam. This condition decreased the amount of spill available to meet the Biological Opinion spill levels specified for fish passage purposes. The 2004 operating year began with Canadian reservoir storage at 88.7% full, and ended the year 88.5% full.

b) *spill quantities and durations:*

The seasonal average flows for the 2004 spills season was 77,000 cubic feet per second (cfs, or 77 kcfs) as measured in the Lower Snake River. The spill program in the Lower Columbia River started on April 12 for McNary, John Day, The Dalles and Bonneville Dams. Spill ended on June 23 for McNary and August 31 for the three other dams.

McNary Dam spill amount was to the 120% gas cap at night during April 12 through June 23, and spill quantities ranged from 0 kcfs to 187 kcfs during this period. On June 23, transport of fish began because river flows were below average resulting in the formal discontinuation of spill. Although the McNary spill was formally discontinued, the project continued to intermittently spill between 13 and 53 kcfs, from June 28 through July 2 to assist in fish.

The John Day Dam spill level was 60% of the dams outflow at night until July 20. On July 21 the spill amount decreased to 30% of the dams outflow 24 hours a day. Spill quantities ranged from 17 kcfs to 156 kcfs in 2004.

The Dalles Dam spill level was 40% of the dams outflow for the duration of the spill season. Spill quantities ranged from 10 kcfs to 160 kcfs.

The Bonneville Dam spill level fluctuated during the spill season to protect chum redds between November 13 through May 31, 2004. Spill at Bonneville Dam began April 12 and ended August 31, and ranged from 49 kcfs to 180 kcfs. The Bonneville Dam spilled in accordance with a regionally coordinated fish passage spill test established to determine the effect of different daytime spill levels on adult passage and fallback rates. Spill for the Bonneville fish passage spill test varied between the Biological Opinion conditions and 50 kcfs. The Biological Opinion spill was spilling 75 kcfs during the day and during the nighttime, spilling to the gas cap or the project outflow, whichever was greatest. Test conditions were spilling 50 kcfs for 24 hours. Evaluations for this test will not be completed for at least three years when the adult fish return.

c) *quantities of water spilled for fish versus spill for other reasons for each project:*

Because of the below average runoff, the amount of spill above the Biological Opinion spill levels for fish passage purposes was lower than years with higher runoff.

Involuntary spill at McNary ranged from 15 kcfs to 53 kcfs due to limited hydraulic capacity. There were a total of seven exceedances of the TDG waiver limit of 120%. From May 31 through June 2, McNary exceeded the TDG waiver limit of 120% twice because of flood control spill due to increased river flow from snow melt and precipitation. The other five exceedances were associated with bulk spill patterns to address increases in water temperature.

Spill stayed below the Biological Opinion spill levels for fish passage at John Day, The Dalles, and Bonneville Dams. Quantities of spill for these dams are reported above in item *b*.

d) data from the physical and biological monitoring programs, including incidences of gas bubble disease:

Physical monitoring of TDG during the 2004 spill season recorded 50 exceedances to Oregon's TDG waiver, as seen in the table below. McNary Forebay exceeded the TDG most often, 23 incidences. Exceedances of the high 12-hour average of TDG include both voluntary and involuntary spill for fish passage, dam capacity and flood control, increased river temperatures, and cumulative effects from upstream dam spill TDG levels. The forebay TDG exceedances varied from 115.1% to 121.3%. The tailwater TDG exceedances varied from 120.1% to 125.6%.

Water Quality Gages	# of 2004 TDG Exceedances
McNary Forebay - Or.	23
McNary Tailwater	7
John Day Forebay	0
John Day Tailwater	0
The Dalles Forebay	5
The Dalles Tailwater	0
Bonneville Forebay	1
Warrendale	0
Camas/Washougal	14
Total Number of Exceedances	50

The ACOE notifies the Department when an exceedance of the waiver occurs. It may either decrease the amount of spill or terminate spill in order to maintain TDG levels below the waiver limits. The Department does not issue Notices of Non-Compliance for these exceedances because compliance is maintained by the notification process and through the immediate resulting action to reduce TDG.

A fish passage spill test occurred at Bonneville Dam to determine the effects of different daytime spill levels on adult passage and fallback rates. Spill ranged from 50 kcfs to 75 kcfs, or to the gas cap at night (whichever was greatest at night). The spill to the gas cap during the night ranged from 95 kcfs to 175 kcfs. TDG levels ranged from 106% to 119% during the spill test.

Biological monitoring included sampling of subyearling and yearling Chinook and steelhead. Sampling occurred two days per week at Bonneville and McNary dams during the duration of spill. A total of 8,016 juvenile fish were examined, with 3 (0.4%) exhibited signs of gas bubble disease, compared to 0.5% in 2003. No fish were found with severe fin gas bubble trauma.

*e) progress on implementing the measures contained in the Lower Columbia River Total
Dissolved Gas TMDL:*

In January 2004, construction of the Bonneville Powerhouse 2 Corner Collector at Bonneville Dam was completed. This structure was operational during March through August. The daily spill consisted of 50 kcfs during the day and to the TDG cap at night. The corner collector is designed to move water from the ice/trash sluiceway into the tailrace. It is also able to pass fish, which allows for decreased spill from Bonneville Dam.

Completion of the Spillway Guide Divider Wall at The Dalles Dam was completed prior to April 2004. The wall reduces the lateral flow that was occurring in the spillway basin, ensures that eddies do not form in the spillway, forces the water to flow downstream, and allows the fish to travel downstream quickly and avoid predators. As a result, fish mortality has decreased because the risk of predators is reduced.

Additional ACOE TMDL implementation actions are presented in Attachment D.

U.S. Fish and Wildlife Service:

The spill at Bonneville Dam provided passage for about 7.5 million tule fall Chinook juvenile salmonids. The Spring Creek National Fish Hatchery released 3.7 million tule fall Chinook salmon in the early afternoon of March 1. Spill occurred at Bonneville Dam from March 2 to 6 with a target of 50 kcfs. A second release of 3.7 million sub-yearlings fish occurred on the morning of March 10. Spill at the Bonneville Corner Collector started on March 11 for 96 hours, until the afternoon of March 15. The flow at Bonneville Corner Collector was about 5 kcfs.

The USFW collected and examined 112 fish for signs of gas bubble trauma, and monitored water quality in the mainstem Columbia during the March 2 to 6 spill period and monitored water quality during the March 11 to 15 Bonneville Corner Collector operation. Biological sampling was conducted on March 3. Biological monitoring showed that none of the 112 fish that were collected and examined exhibited any indication of gas bubble trauma.

Water quality data showed that total dissolved gas levels recorded at the tailrace monitoring station at Warrendale reached a maximum of 107.2% and thus did not exceed the 120% waiver limit. The TDG levels recorded at the Camas/Washougal monitoring station reached 107.5% and thus did not exceed the 115% waiver limit.

The USFW has no specific implementation responsibilities under the TDG TMDL. The USFW has primary responsibility for is the production, release, and safe passage of the salmon from Spring Creek National Fish Hatchery. The advent of the Bonneville Powerhouse 2 Corner Collector has presented an effective alternative to spilling for the March release group. 2004 was the first year of the Bonneville Corner Collector operation. Evaluations have begun to determine the effectiveness of the Bonneville Corner Collector versus spill in March. Evaluations for the March release will not be complete for at least three more years, when the adults from brood year 2003 have returned. USFW will continue to work with the ACOE and BPA to provide the best possible passage at Bonneville Dam, while being mindful of the TDG issues.

U.S. Army Corps of Engineers TDG TMDL Implementation Summary

The following summary tables provide an overview of the status of U.S. Army Corps of Engineers TDG TMDL Implementation activities, both short-term and long-term.

SHORT TERM – PHASE I TMDL Implementation

A. Structural Implementation Actions:

2000 Biological Opinion Action Item Description	Status	Estimated Completion Date
Ice Harbor Deflectors	Constructed. Biological evaluations continue.	2002
John Day Deflectors	Constructed	2002
Survival based spill caps at all dams (e.g. 40% at The Dalles).	Studies are on-going.	N/A
Bonneville Endbay Deflectors	Constructed	2002
McNary Endbay Deflectors	Constructed	2002
Lower Monumental Endbay Deflectors	Constructed. Biological Evaluations Continue	2003
Little Goose Endbay Deflectors	Constructed.	2003
Chief Joseph Deflectors	Preconstruction Engineering and Design on-going. Phase 1 construction (of 3) expected to begin June 2005.	2008
The Dalles Deflectors	Not planned at this time, spillway survival still under investigation	N/A
John Day Endbay Deflectors	Not planned at this time.	N/A
Divider Walls at Appropriate Dams	The Dalles: Constructed – Biological Evaluations Continue	2004
Bonneville Powerhouse 2 Corner Collector	Constructed. Biological Evaluations Continue through FY05	2004
Bonneville Powerhouse 2 Fish Guidance Efficiency Improvement	Decision Document Due FY05 – Recommendation for FGE improvements	2007
Lower Granite Removable Spillway Weir	Constructed. Evaluations of spring and summer migrants continue.	2003
The Dalles Turbine Intake Blocks	Evaluation Complete – Not warranted	N/A
Lower Monumental Bypass Outfall Relocation	Currently under evaluation.	Unknown
Bonneville Powerhouse 1 Surface Bypass or Extended Screens	Biological evaluations continue – FY06 for alternatives	Unknown

B. Operational Implementation Actions:

Operational Action	Status
Scheduling routine turbine maintenance and repair during low-power load and river flow periods.	On-going.
Preventative maintenance of turbines to prevent breakdown	On-going.
System management of water release from upstream storage reservoirs to minimize involuntary spills at dams in the TMDL area.	On-going.
Optimizing power purchasing to allow maximum use of powerhouse capacity and minimization of involuntary spill.	On-going.

II. LONG TERM – PHASE II TMDL Implementation

2000 Biological Opinion Action Item Description	Status	Expected Completion Date
John Day Surface Bypass (may be Removable Spillway Weir)	Decision document Phase 1 complete in FY05 – Recommendations for further action at completion	Unknown
Removable Spillway Weirs at Lower Monumental, Little Goose, Ice Harbor and McNary	LMN: Currently in Design. LGS: Under review. IHR: In construction MCN: Under Review	2007 2008-10 March 2005 2008-2010
McNary Bypass Improvements (outfall, temperature)	Temperature improvements are currently being evaluated. No investigations concerning outfall improvements are on-going.	Unknown
Lower Monumental Extended Screens	On Hold pending decision document	Unknown
John Day Extended Screens	On Hold pending decision document	Unknown
Spill Effectiveness Studies	Ongoing, site specific as warranted	Unknown
Predator Removal and Abatement	Nothing at this time – Typically BPA funded	N/A
Improved Operation and Maintenance	Ongoing	N/A
Bonneville Powerhouse 1 Minimum Gap Runners	Units 2, 10, 08 to be completed (4 complete to date)	2005-2007
McNary Modernization	Ongoing	Unknown
Implement Turbine Survival Program Results	Ongoing	Unknown

Washington State's Total Dissolved Gas Water Quality Criteria, Current and Proposed

Current water quality criteria:

WAC 173-201A-060

(4)(a) The water quality criteria herein established for total dissolved gas shall not apply when the stream flow exceeds the seven-day, ten-year frequency flood. (b) The total dissolved gas criteria may be adjusted to aid fish passage over hydroelectric dams when consistent with a department approved gas abatement plan. This gas abatement plan must be accompanied by fisheries management and physical and biological monitoring plans. The elevated total dissolved gas levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The specific allowances for total dissolved gas exceedances are listed as special conditions for sections of the Snake and Columbia rivers in WAC 173-201A-130 and as shown in the following exemption:

Special fish passage exemption for sections of the Snake and Columbia rivers: When spilling water at dams is necessary to aid fish passage, total dissolved gas must not exceed an average of one hundred fifteen percent as measured at Camas/Washougal below Bonneville dam or as measured in the forebays of the next downstream dams. Total dissolved gas must also not exceed an average of one hundred twenty percent as measured in the tailraces of each dam. These averages are based on the twelve highest hourly readings in any one day of total dissolved gas. In addition, there is a maximum total dissolved gas one hour average of one hundred twenty-five percent, relative to atmospheric pressure, during spillage for fish passage. These special conditions for total dissolved gas in the Snake and Columbia rivers are viewed as temporary and are to be reviewed by the year 2003. (c) Nothing in these special conditions allows an impact to existing and characteristic uses.

Proposed water quality criteria (not yet EPA-approved, approval anticipated in summer, 2005):

Aquatic life total dissolved gas (TDG) criteria. TDG is measured in percent saturation. Table 200 (1)(f) lists the maximum TDG criteria for each of the aquatic life use categories.

(i) The water quality criteria established in this chapter for TDG shall not apply when the stream flow exceeds the seven-day, ten-year frequency flood.

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams when consistent with a department approved gas abatement plan. This plan must be accompanied by fisheries management and physical and biological monitoring plans. The elevated TDG levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The following special fish passage exemptions for the Snake and Columbia rivers apply when spilling water at dams is necessary to aid fish passage:

* TDG must not exceed an average of one hundred fifteen percent as measured in the forebays of the next downstream dams and must not exceed an average of one hundred twenty percent as measured in the tailraces of each dam (these averages are measured as an average of the twelve highest consecutive hourly readings in any one day, relative to atmospheric pressure); and

* A maximum TDG one hour average of one hundred twenty-five percent must not be exceeded during spillage for fish passage.

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 31, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Agenda Item C, Informational Item: Oregon's Assessment of the Oregon Plan for Salmon and Watersheds
April 21, 2005 EQC Meeting

Purpose of Item The State of Oregon recently released a draft report assessing the effectiveness of efforts under the Oregon Plan for Salmon and Watersheds to restore Oregon Coastal coho. This report will be finalized by April 30. DEQ and other state natural resources agencies worked together to conduct this assessment by analyzing environmental data as well as evaluating regulatory and voluntary conservation efforts. This information will also be used to inform the federal government's upcoming decision on the status of the Coastal coho under the Endangered Species Act (ESA). The purpose of this informational item is to inform the Commission about the findings from this assessment.

Background In 1995 the National Oceanographic and Atmospheric Administration Fisheries Division (NOAA Fisheries) proposed to list the Oregon Coastal coho as threatened or endangered under the ESA. The Coastal coho are considered to be an "Evolutionarily Significant Unit" (ESU), the range of which extends from Cape Blanco to the mouth of the Columbia River (map attached).

In response to this proposal, Governor John A. Kitzhaber asked state agencies to develop an initiative to restore coho salmon. As a result, all state natural resource agencies, with input from federal land management agencies, coordinated their efforts and developed the Oregon Plan for Salmon and Watersheds (the Oregon Plan). The Oregon Plan was officially adopted by the Oregon legislature in March 1997. The Oregon Plan brings together various governmental and non-governmental entities from throughout Oregon to implement conservation strategies for fish populations, including the Coastal coho.

In 1998 NOAA Fisheries published its final rule listing the Coastal coho as "threatened" under the ESA. As a result of a court decision in 2001, NOAA was required to reevaluate its listing of the Coastal coho. In June 2004, after conducting the reevaluation, NOAA again proposed to list the Coastal coho as threatened under the ESA. A final listing decision is expected in June 2005.

In 2003 the State initiated an assessment of the Oregon Plan. The purpose of this assessment was to determine how the state was doing in its efforts to restore Coastal coho. When the assessment is completed this April, it will be submitted to NOAA Fisheries for consideration in making their final listing decision for the coho (due June 2005). The assessment provides NOAA with information not previously considered because it incorporates very recent scientific data to support a more comprehensive and updated analysis of coho viability. It also includes results of the state's extensive monitoring data related to coho and habitat condition, much of which has been collected as part of the Oregon Plan.

Key Findings Key findings from the assessment include:

- ◆ Coho populations within the ESU are biologically viable and contain sufficient habitat of suitable quality to sustain the populations through future adverse ocean, drought or flood conditions.
- ◆ Historical land, water and fish management activities that were major contributing factors to coho declines have been stopped.
- ◆ Conservation efforts have addressed the primary harvest and hatchery related threats in the ESU. Ongoing conservation and management efforts are addressing habitat-related threats (including water quality) to coho viability.
- ◆ Data collected over the last ten years show few trends in habitat and water quality in the Coastal Coho ESU. Where trends do occur, they show improving conditions (e.g., 12 of 31 ambient river sites show a significant improvement in water quality, and none declining, from 1993 to 2002).
- ◆ Water quality is not considered the primary risk factor to coho populations in the ESU. Although water quality remains a concern as an aspect of watershed function and Clean Water Act compliance throughout much of the ESU, the role of water quality is judged as secondary to the role of habitat complexity with respect to Coastal coho population viability.
- ◆ Enhancement of complex freshwater overwinter rearing habitat (pools and off-channel habitat) provides the best opportunity to improve 13 of 19 coho populations within the ESU.

Next Steps

- ◆ Oregon will finalize and submit its assessment to NOAA Fisheries by the end of April. The Governor's Office will oversee and submit the final report.
- ◆ The assessment will be used by the State to develop a conservation plan for coastal coho under the Native Fish Conservation Policy, which will also serve as a federal recovery plan if the coho are listed by NOAA Fisheries.
- ◆ The state is working on a timeline to replicate this process in other ESUs, including the Mid Columbia (steelhead), Snake (Chinook and steelhead) and Lower Columbia/Willamette (Chinook, steelhead, chum, and coho) ESUs.

Agenda Item C, Informational Item: Oregon's Assessment of the Oregon Plan for Salmon
and Watersheds

April 21, 2005 EQC Meeting

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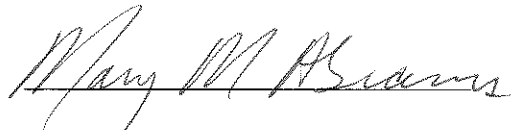
**EQC
Involvement** None needed at this time.

Attachments Map of the Coastal coho Evolutionarily Significant Unit

**Attachments
Available
Upon Request** The final assessment reports from all agencies as well as the synthesis reports
are available at the following web site:
<http://nrimp.dfw.state.or.us/OregonPlan/default.aspx?page=152>

Approved:

Division:



Report Prepared By: Mary Abrams

Phone: (503) 229-5983, ext. 225

Agenda Item C, Informational Item: Oregon's Assessment of the Oregon Plan for Salmon and Watersheds

Attachment A, Map Showing Range of the Coastal Coho Salmon ESU

April 21, 2005 EQC Meeting

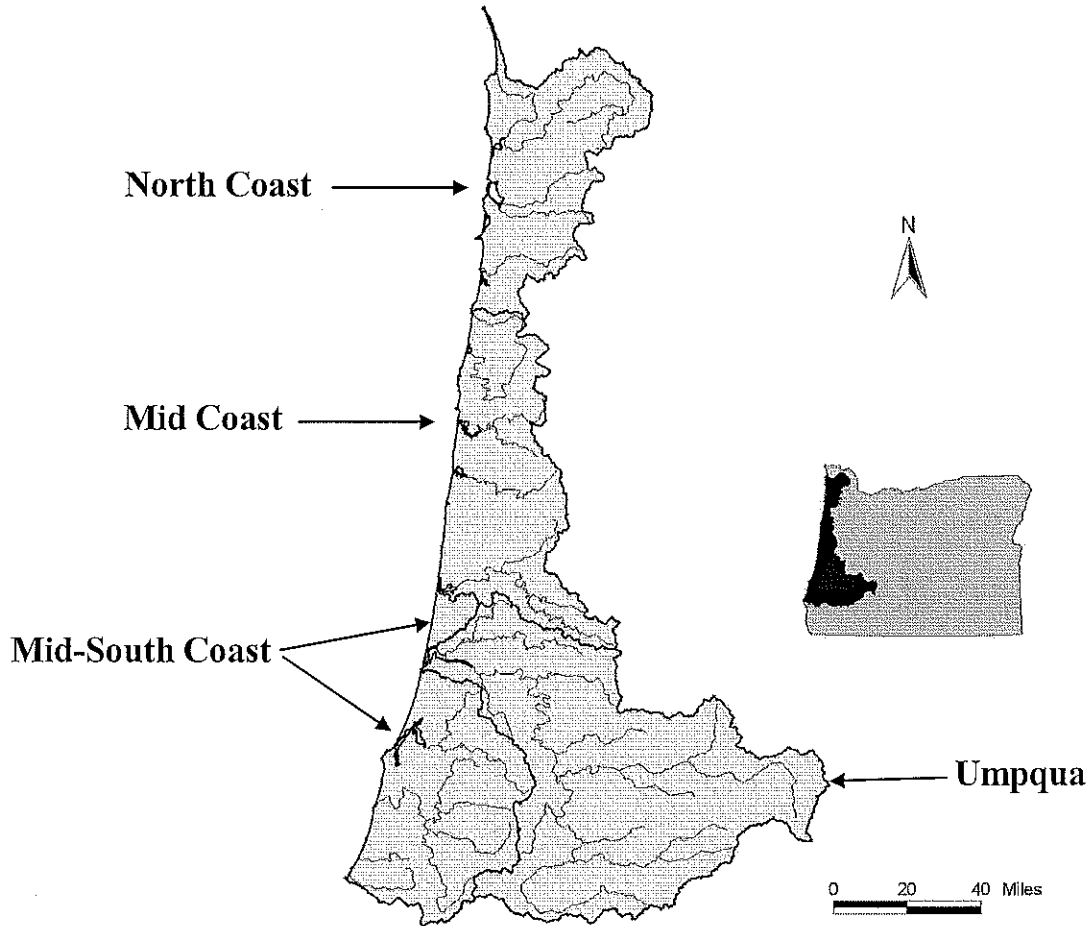


Figure 1. The Oregon Coast Evolutionarily Significant Unit (ESU) with the four monitoring units: North Coast, Mid-Coast, Mid-South Coast and Umpqua.

**STATEMENT OF MICHAEL GEARHEARD
DIRECTOR, OFFICE OF WATER AND WATERSHEDS
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10**

**BEFORE THE OREGON ENVIRONMENTAL QUALITY COMMISSION
APRIL 21, 2005**

Good afternoon Chair Reeve and members of the Commission. My name is Mike Gearheard. I am the Director for the Office of Water and Watersheds for the U.S. Environmental Protection Agency's Region 10 office. Thank you for this opportunity to share our thoughts with Commission members today.

Today I intend to discuss EPA's responsibilities and authorities under the Clean Water Act to review and take action on Oregon's water quality standards. My comments will be directed at EPA's review of the Oregon standards for toxic constituents and specifically the related fish consumption rate.

I appreciate this opportunity to speak before the Commission today on this important issue of fish consumption rates and adoption of protective water quality criteria. First, I would like to express our regret that we did not raise this matter more clearly and explicitly last year when these standards were being actively considered by DEQ and the Commission. It is my hope that EPA and the State can work together in water quality standards development and adoption to identify and wherever possible head off issues such as the one we are discussing today.

To my knowledge, this is the first EPA dialogue with the Commission concerning the Oregon toxics water quality standards and EPA's past work with Tribal populations to assess and understand fish consumption and fish contamination. Having said that, I sincerely look forward to a continuing dialogue with the Commission on this issue and would welcome future invitations to speak to you. In my remarks today, I will first provide background information on EPA's work efforts on fish consumption and fish contamination; second, provide an update on EPA's recent dialogue with the Confederated Tribes of the Umatilla Indian Reservation and an encouraging potential future work effort to reduce toxics in fish

that tribal members eat; and finally, give you an update on EPA's review process for the Oregon 2004 water quality standard submittal.

In 1991, EPA entered into an agreement with the Columbia River Inter-Tribal Fish Commission (referred to commonly as "CRITFC") and its member tribes (Umatilla, Nez Perce, Yakama, Warm Springs) to better understand the relationship of tribal fishing practices and the likelihood of their exposure to environmental contaminants through fish consumption. In the first phase of this agreement, EPA provided a grant to CRITFC for a fish consumption survey. This work effort received intense national and regional scrutiny in the design of the survey including interview training for CRITFC staff by the Center for Disease Control. Both a technical advisory group and a peer review panel subjected the work to review. This survey, completed in 1994, documented the amount and types of fish consumed by the four Columbia River Treaty Tribes. The survey results demonstrated that the CRITFC tribal members consume higher amounts of fish per capita than does the average citizen in the U.S. EPA subsequently used the results of the consumption survey in the revisions to our methodology for developing water quality criteria as well as for our hazardous waste site remediation – specifically to derive tribal subsistence ingestion rates.

The second phase of our agreement with CRITFC was to complete a survey of contaminants in fish tissue. A multi-agency group including state, federal and tribal agencies, designed this survey. The Columbia River Basin Fish Contaminant Survey was completed in July 2002. The results of this survey documented the presence of residues of 92 priority pollutants in fish that are consumed by Native Americans as well as other people in the Columbia River Basin. All of these chemicals are included in Oregon's water quality standards to protect human health. The outcome of this study shows that the health risks (both cancer and non-cancer) associated with consuming fish contaminated with these chemicals is elevated for tribal members relative to the general public based on their significantly higher consumption rates. The level of elevation is variable dependent on the particular species and site.

The chemicals measured in Columbia River fish that were the major contributors to risk are PCBs, dioxins, furans, arsenic, mercury, and DDE, a breakdown product of DDT. While production of PCBs and DDT has been banned, they are still commonly found in municipal and industrial discharges and hazardous waste releases. Dioxins and furans may be generated in small amounts during certain manufacturing processes. Arsenic is naturally occurring and could be a result of earth disturbances, like mining. Mercury, a toxic receiving a lot of recent attention and released through industrial and energy related activities, poses a special problem through atmospheric-ocean exchange.

As you know Oregon submitted to EPA revised water quality criteria for toxic pollutants in July 2004. Oregon's revised toxic criteria are based on a revised fish consumption rate of 17.5 grams per day, up from 6.5 grams per day. Because of the level of fish consumption in highly exposed populations, such as recreational and subsistence fishers, in addition to the general population, varies by geographical location, EPA guidance suggests a four preference hierarchy for States and authorized Tribes. The first preference for deriving consumption rates is the use of local data, which we have for the four Columbia River tribes, as I previously described to you. EPA's fourth preference in the hierarchy is that States and authorized Tribes use as fish consumption assumptions the default rates of 17.5 grams/day for the general adult population and sport fishers, and 142.4 grams/day for subsistence fishers. This information is based on EPA evaluation of numerous fish consumption surveys.

EPA takes very seriously its government-to-government responsibility to Indian tribes. That responsibility has been continually reaffirmed by EPA Administrators since EPA was the first Federal agency to affirm President Reagan's Executive Order in 1984. In July 2001, in consultation with tribal governments, Region 10 adopted its own policy on tribal consultation and coordination.

Consistent with that policy, I have met with representatives from the Confederated Tribes of the Umatilla Indian Reservation (Umatilla Tribe) to discuss Oregon's water quality criteria for toxics, specifically their concern that Oregon's 17.5 grams per day fish consumption rate

may not adequately protect their population from exposure to contaminated fish. I met with the Umatilla Tribe Board of Trustees on September 3, 2004, to discuss this issue. At that meeting I committed to work with them and the Oregon DEQ to help facilitate a mutually agreed upon resolution. Representatives from the Umatilla Tribe Board of Trustees have also met with senior water program officials at EPA Headquarters in Washington, D.C.

I would like to share with you an encouraging initiative that has come out of these discussions. Staff and managers from the Oregon Department of Environmental Quality, EPA, and the Umatilla Tribe have had a number of meetings in an attempt to resolve this important issue. As a result, a two-prong initiative has been launched to try and resolve the issue at two different levels. This first track was to prepare and coordinate staff and managers for this dialogue today. The second track is a joint toxics reduction effort designed to reduce the Umatilla Tribe members' exposure to consuming fish contaminated by toxic pollutants. This work would be similar to the work that you may be familiar with that has occurred in Hood River to reduce pesticide inputs in the environment. Currently a team of people from EPA and DEQ are working to identify toxic chemicals in the environment, sources of those chemicals, and potential management actions that can be implemented to reduce contamination. EPA Headquarters, which is following this, is encouraged by this initiative and is exploring opportunities to support it.

EPA's review process for Oregon's water quality standards revision is moving forward. EPA received Oregon's revised water quality criteria for toxics in July of 2004. At that time we indicated to DEQ that this was a complex package of water quality criteria and the review and approval process was going to take time. EPA must evaluate the revised toxics standards for Clean Water Act compliance and then coordinate with NOAA Fisheries and the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act (ESA). When we received Oregon's package we knew that coordination with NOAA Fisheries and U.S. Fish and Wildlife Service would be important because both agencies had raised concerns regarding some of the criteria adopted by Oregon. In addition, since receiving the package, we have been working to address concerns raised by the Umatilla Tribe. At this time, while we continue to address the concerns raised by the Umatilla Tribe and continue our consultations

with NOAA Fisheries and the U.S. Fish and Wildlife Service, I am not able to give you a date when EPA will complete its review of Oregon's revised standards.

I hope this information presented to you today provides you with helpful information both in understanding EPA's past and current work efforts in trying to better understand the exposure to toxics faced by highly exposed populations. I also hope to continue to work with the State and the Tribe to identify the most effective mechanisms to address concerns regarding adequate protection of tribal populations from exposure to contaminated fish. At the same time, EPA will continue its work with NOAA Fisheries and the U.S. Fish and Wildlife Services to resolve any concerns regarding the protection provided to endangered species from Oregon's revised criteria. EPA is anxious to conclude this work and take final action on Oregon's revised standards.

I want to again thank Chair Reeve and members of the Commission for the opportunity to speak to you today. I am willing to answer any questions you may have at this time. As I stated earlier, I look forward to a continuing dialogue with you on these and other important issues.

April 20, 2005

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

Dear Commissioners:

Thank you for the opportunity to share our perspectives with the Environmental Quality Commission concerning the proposed fish consumption rates to set water quality standards for the State of Oregon. The Confederated Tribes of the Umatilla Indian Reservation requested our assistance to provide objective and independent review of the health implications for tribal populations. Over the past two weeks, we have studied several documents that have bearing on these issues.

Our committee is concerned that the proposed fish consumption rate of 17.5 grams per day, while following national default rates, does not provide acceptable levels of protection for tribal members who follow traditional diets rich in fish. The 1994 CRITFC survey of fish consumption provides strong scientific data to support our concern. Resident fish including trout, whitefish, and sturgeon constitute a high proportion of the diets of the Umatilla and Warm Springs tribes. Although the CRITFC survey focused on the four Salmon Treaty tribes, other tribes in Oregon follow similar life ways and traditions.

Fish is a healthy food for the tribes. The return to traditional diet is actively promoted by tribal health services to prevent cardiovascular disease, diabetes, and cancer. It is important to have a high standard for protection of fish, because tribal people may eat less fish due to concerns of contamination. By artificially suppressing fish intake, tribal members may shift to less nutritious foods and lose the many benefits associated with eating fish.

In the short time frame available, our committee evaluated the potential health implications of exposure to methyl mercury at various consumption rates. At average and high end ingestion rates identified by the CRITFC survey, our committee found elevated risk and insufficient protection for tribal populations, particularly women of childbearing age, infants, and children. This finding is especially alarming given the well-established neurological and developmental effects of methyl mercury.

Based on the example of methyl mercury, we are concerned not only for the Umatilla, but also other tribes, and subsistence, sport, and ethnic populations who harvest fish in Oregon waters. At this point, we have not had the opportunity to consider other chemical contaminants and health outcomes. We also would like the opportunity to study and review the recommendations of DEQ's Technical Advisory Committee. Therefore, we request two months to study and report back to the EQC at its June 2005 meeting.

Sincerely,

William Lambert, PhD
Oregon Health & Science University

David Stone, PhD
Oregon Department of Human Services

Patricia Cirone, PhD

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 31, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Agenda Item D, Government to Government Dialogue with the Confederated Tribes of the Umatilla Indian Reservation: Oregon's Water Quality Toxics Standards and the Fish Consumption Rate
April 21-22, 2005, EQC Meeting.

Background **EQC adopts revised toxics criteria**

On May 20, 2004, the Oregon Environmental Quality Commission (EQC) adopted revisions to Oregon Administrative Rules (OAR 340-041-0033) concerning water quality criteria for toxic pollutants (see Attachment A: Oregon Environmental Quality Commission Minutes of the Three Hundredth and Eighteenth Meeting). The rulemaking process took more than three years to complete and was conducted as part of DEQ's triennial review of water quality standards.

The Federal Water Pollution Control Act ("Clean Water Act") directs qualified states and tribes to adopt water quality standards, which then must be approved by the US Environmental Protection Agency (EPA). EPA defines water quality standards as consisting of:

- 1) beneficial uses—the goals for the waterbody (e.g. fishing);
- 2) criteria (the minimum numeric and narrative conditions that will protect those beneficial uses; and
- 3) an antidegradation policy (to protect water quality that exceeds the criteria from unnecessary degradation).

The toxics criteria include aquatic life criteria, which protect the beneficial use of "fish & aquatic life," and human health criteria, which protect the beneficial uses of "fishing," "water contact recreation," "aesthetic quality," "public domestic water supply," and "private domestic water supply." The human health criteria adopted by the EQC were based on EPA's "National Recommended Water Quality Criteria—2002" and "Revision of National Recommended Water Quality Criteria" (also published in 2002).

The human health criteria for carcinogens are calculated using factors for risk level (number of cancers per capita), body weight, carcinogenic potency of the chemical, water intake, bioconcentration factor in fish, and fish consumption rate. For non-carcinogens, the criteria are calculated using similar factors, including fish consumption rate. Fish consumption rate is inversely related to

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the value for the human health criterion, i.e., the larger the fish consumption rate used, the lower (more stringent) the criterion. The human health criteria adopted by the EQC in May 2004 increased the representative fish consumption rate from 6.5 g/day (0.2 oz/day) to 17.5 g/day (0.6 oz/day), as suggested in the EPA guidance and the latest EPA recommended criteria in 2002.

Stakeholder involvement

The effort to revise Oregon's numeric water quality criteria for toxic pollutants ("toxics criteria") began in January 2001 with the introduction of this topic to the Water Quality Standards Policy Advisory Committee (PAC). The PAC was made up of representatives from industry, municipalities, forestry, agriculture, fisheries, environmental groups, and tribes. A list of PAC members is included in Attachment B. Tribal representation and active participation on the PAC varied, as shown in Attachment C.

The PAC also included *ex officio* members from EPA, the US Fish & Wildlife Service, and NOAA-Fisheries. The toxics criteria were discussed at varying frequencies--as often as once per month--from January 2001 through December 2003. These meetings were open to the public.

A toxics criteria Technical Advisory Committee (TAC) supported the PAC. The TAC was made up of toxicologists from academia and government agencies. TAC meetings were also open to the public and were held from May 2001 through July 2002. The Department sent written summaries of the PAC and TAC meetings to committee members and posted them on the DEQ website.

The issue of which fish consumption rate to use in deriving the human health criteria was discussed repeatedly by the PAC and TAC. The TAC concluded that any one of four different fish consumption rates (US EPA's 2000 guidance recommended 90th or 99th percentiles: 17.5 g/day or 142.4 g/day, respectively; the Columbia River Inter-Tribal Fish Commission 1994 study's average or 99th percentile: 63.2 g/day or 389.0 g/day, respectively) could be used, and the PAC was unable to come to consensus on which of the four fish consumption rates to recommend to DEQ. Ultimately, DEQ proposed for public comment the human health criteria a fish consumption rate of 17.5 g/day (0.6 oz/day), based on the available average for the general population.

Public Comment

The proposed rule was released for public comment on June 2, 2003 with the comment period initially set at 60 days. The public comment period included six hearings held in three locations (Bend, Roseburg, and Portland). On July 28, 2003, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) requested an extension of the comment period (several other parties also made

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such a request). On July 31, 2003, DEQ extended the comment period an additional 28 days (until August 29, 2003). DEQ met with representatives of the CTUIR on August 20, 2003 to discuss issues of concern regarding the proposed rule, including the fish consumption rate.

DEQ received written public comment on the proposed rule from 51 individuals or organizations, including the CTUIR, the Confederated Tribe of Siletz, and the Columbia River Inter-Tribal Fish Commission. The issue of which fish consumption rate to use for human health criteria received frequent comment that spanned from support for the proposed rate of 17.5 g/day (0.6 oz/day) to support for higher rates (see Key Issues below).

**Key Issues
Addressed in
Final Proposal to
EQC**

Seven key issues were identified in the final proposal sent to the EQC in advance of May 20-21, 2004 meeting:

1. *Should the human health criteria for toxic pollutants be derived using a fish consumption rate higher than the national recommendation of 17.5 g/day?*
2. *Should the aquatic life metals criteria be expressed as "total recoverable" or "dissolved" concentrations?*
3. *Should the Department maintain the current aquatic life criteria for mercury?*
4. *Should the Department adopt a toxic equivalency factor (TEF) approach for dioxin-like compounds?*
5. *Should the Department propose numeric criteria for pollutants, especially pesticides, for which EPA has yet to develop recommendations?*
6. *Will adoption of the new water quality toxics criteria create an unreasonable implementation burden on permitted sources?*
7. *Does the Department anticipate difficulty in securing federal approval for the proposed revisions to the toxics criteria?*

**EQC Meeting
May 20-21, 2004**

On May 20, 2004, the EQC discussed the proposed water quality toxics criteria, including the fish consumption rate of 17.5 g/day used in deriving the human health criteria. The CTUIR submitted comments (oral and written) on the toxics criteria package during the Public Forum portion of the EQC meeting (see Attachment D). Director Hallock responded to those comments by letter (see Attachment E).

EQC members asked DEQ to continue to search for funding for a study to establish an Oregon-specific or Northwest-specific fish consumption rate as a possible alternative. The EQC voted unanimously to adopt the final DEQ proposal for revising the water quality criteria for toxics.

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Since EQC adoption of revised criteria

On July 8, 2004, DEQ submitted the revised toxics criteria to EPA Region 10 for review and approval. This submission officially started the EPA approval/disapproval review process (which stipulates 60 days for approval or 90 days for disapproval). EPA has not yet approved or disapproved the rule revisions in DEQ's submission package (see 'EPA consultation' below).

Those criteria that are more stringent than the existing criteria went into effect on February 15, 2005, in accordance with the effective date adopted by the EQC. Other criteria will go into effect upon approval by EPA.

On November 24, 2004, DEQ released a draft Internal Management Directive entitled "Reasonable Potential Analysis for Toxics" for comment from interested stakeholders. This document describes how DEQ will incorporate the toxics criteria into wastewater permits. The comment period ended January 14, 2005, and DEQ is currently revising the Internal Management Directive in response to comments.

EPA consultation on ESA compliance

Shortly after the EQC adopted the toxics criteria in May of 2004, EPA convened meetings with DEQ, NOAA-Fisheries and the US Fish and Wildlife Service to discuss the revised aquatic life criteria because EPA assumed that Endangered Species Act (ESA) issues would constitute the biggest hurdle to reaching an approval/disapproval decision by February 15, 2005. Throughout the PAC process and prior to EQC adoption of the rule, EPA had given DEQ no indication that the human health criteria would be problematic, nor did EPA submit comments during the comment period.

EPA consultation with tribes

On August 5, 2004, EPA Region 10 informed DEQ that the CTUIR had raised concerns about the fish consumption rate during discussions as part of EPA's tribal treaty trust responsibilities to consult on the toxics criteria. DEQ contacted the CTUIR on August 18, 2004 regarding their concerns about the human health portion of the toxics criteria. Specifically, the CTUIR objected to human health criteria based on a fish consumption rate of 17.5 g/day (0.6 oz/day) as not protective of tribal members. The CTUIR has asked Oregon to adopt human health criteria based on a higher fish consumption rate. The CTUIR has indicated that it has or will be changing its own water quality human health criteria to include a fish consumption rate of 389 g/day (13.7 oz/day).

DEQ discusses fish consumption with CTUIR and EPA

On September 13, 2004, Oregon DEQ participated in a conference call with EPA Region 10 and the CTUIR in which the parties discussed Oregon's toxics criteria package awaiting action by EPA. EPA submitted a draft letter to DEQ and the CTUIR proposing a process by which the parties could reach agreement on Oregon's water quality criteria for toxics (specifically to address

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the CTUIR's concerns on human health criteria). All parties commented on the draft, and a final letter from EPA Region 10 was sent to DEQ and the CTUIR in November (see Attachment F).

On October 26 and 27, 2004, Deputy Director Paul Slyman attended the Seventh Annual Tribal-State Government-to-Government Summit at which the CTUIR raised concern over the fish consumption rate issue in the toxics criteria package.

On November 29, 2004, DEQ discussed the water quality standards approval process with EPA in a conference call. The fish consumption rate issue constituted the major part of the call and the agencies agreed to meet in January 2005 with the CTUIR to continue discussions.

On January 20, 2005, DEQ, the CTUIR, and EPA met in Portland to discuss possible ways to move forward the process of addressing tribal concerns about the fish consumption rate. EPA identified two "paths" that emerged from the meeting: 1) ask the EQC to consider reopening the rule to readdress the issue of the fish consumption rate; 2) develop a toxics reduction plan to address the levels of toxics in fish that CTUIR members consume. The current draft of that workplan is attached (Attachment G).

On January 27, 2005, CTUIR Executive Director Donald Sampson wrote to Director Hallock requesting that DEQ delay implementation of the Department's water quality criteria for toxics until the EQC reconsiders whether to revise this portion of the standard (Attachment H). On February 2, 2005, Director Hallock and DEQ staff met with the CTUIR Board of Trustees and indicated that the Department was not delaying the February 15, 2005 implementation of the standard. On February 11, 2005, Director Hallock responded to the January 27th letter with a letter to CTUIR Executive Director Sampson extending an invitation to the CTUIR to a "Government-to-Government conversation" at the April EQC meeting. (Attachment I).

Attachments

- A. Oregon Environmental Quality Commission Minutes of the Three Hundreth and Eighteenth Meeting.
- B. PAC members and TAC members
- C. 1999-2004 Water Quality Standards Review Chronology and Documentation
- D. CTUIR letter from Armand Minthorn to Members of the Commission, Director Hallock and DEQ Staff
- E. June 15, 2004 DEQ letter from Director Hallock to Armand Minthorn
- F. November 3, 2004 letter from EPA's Michael F. Gearheard to DEQ's Robert Baumgartner

Agenda Item D, Government to Government Dialogue with the Confederated Tribes of the
Umatilla Indian Reservation: Oregon's Water Quality Toxics Standards and the Fish
Consumption Rate
April 21-22, 2005 EQC Meeting
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- G. Umatilla Tribe Toxics Reduction Effort Workplan Draft #1
- H. January 27, 2005 letter from Executive Director Sampson to Director Hallock
- I. February 11, 2005 letter from Director Hallock to Executive Director Sampson

Approved:

Section:

Division:


Robert P. Baumgartner


Holly Schroeder

Memorandum Prepared By: Martin Fitzpatrick
(503)-229-5656

Approved _____
Approved with Corrections X

Minutes are not final until approved by the Commission.

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

**May 20-21, 2004
Regular Meeting¹**

On Wednesday May 19, 2004, the Commission toured the Umatilla Chemical Agent Disposal Facility from 1:00 p.m. to 4:30 p.m. for an on-site inspection of the Department of Environmental Quality's (DEQ) Chemical Demilitarization Program. At approximately 5:30 p.m., the Commission met with local, state, national and tribal officials at the Oxford Suites Hotel, located at 1050 North First Street in Hermiston. At 6:45 p.m., the Commission joined DEQ staff for dinner at the El Cazador, located at 1240 North First Street in Hermiston.

Thursday, May 20, 2004

The following Commissioners were present for the regular meeting, which was held in the Great Hall of the Hermiston Community Center, located at 415 South Highway 395 in Hermiston.

Mark Reeve, Chair
Lynn Hampton, Vice Chair
Deirdre Malarkey, Member
Ken Williamson, Member

At 8:00 a.m., prior to the regular meeting, the Commission held an executive session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the DEQ. The executive session was held pursuant to ORS 192.660(1)(h). At approximately 9:00 a.m., Chair Reeve called the regular meeting to order and introduced Commission members, DEQ Director Stephanie Hallock, Assistant Attorney General Larry Knudsen, and Commission Assistant Mikell O'Mealy. Agenda items were taken in the following order.

A. Approval of Minutes

Commissioner Malarkey moved that the Commission approve draft minutes of the April 8-9, 2004, EQC meeting. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

B. Rule Adoption: Water Quality Standards, Including Toxic Pollutants Criteria

Holly Schroeder, DEQ Water Quality Division Administrator, Bob Baumgartner, DEQ Surface Water Manager, and Martin Fitzpatrick, DEQ Water Quality Standards Specialist, proposed rule amendments to update Oregon's water quality criteria for toxic pollutants. Ms. Schroeder stated that the rules were designed to support DEQ's strategic direction to protect human health and the environment from toxics, and to satisfy the federal Clean Water Act requirement to periodically review and update water quality criteria with the latest scientific information. Mr. Baumgartner explained that the proposed criteria included recent U.S. Environmental Protection Agency recommendations and would provide a framework for the state's efforts to control water pollution by articulating goals and benchmarks for water quality. Mr.

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.

Fitzpatrick described the proposed changes in detail and summarized public comment received on the rules.

Commissioners discussed a number of key issues related to the proposed rule, including the fish consumption rate used to derive the human health criteria for toxics, expression of the aquatic life metals criteria, and expectations for receiving federal approval for the proposed revisions to the toxics criteria. Commissioner Hampton expressed concern about the fish consumption rate used in the proposed rules and its potential impact on tribes and rural Oregonians who eat larger than average quantities of fish. Commissioner Hampton and Chair Reeve encouraged the Department to seek resources for a more accurate evaluation of fish consumption rates in Oregon.

After discussing these and other issues, Commissioner Malarkey moved that the Commission adopt the revised rules as proposed and corrected by the Department. Commissioner Williamson seconded the motion and it passed with four "yes" votes. Director Hallock commended Mr. Fitzpatrick, Mr. Baumgartner and Ms. Schroeder for their work on these challenging rules.

C. Action Item: Dilution Rule Waiver Modification – City of Ashland Wastewater Treatment Facility

Holly Schroeder, DEQ Water Quality Division Administrator, and Jon Gasik, DEQ Western Region Water Quality Engineer, asked the Commission to approve the City of Ashland's request to modify its dilution rule waiver in order to renew the City's wastewater discharge permit. Mr. Gasik explained that the City of Ashland wastewater treatment facility serves a population of over 20,000 and discharges to Ashland Creek approximately ¼ mile upstream of the confluence with Bear Creek. The proposed modification would extend the dilution rule waiver through the summer months and eliminate the requirement to enhance stream flows. Mr. Gasik summarized recent environmental studies and technical analyses that showed that water quality standards would be protected in Ashland and Bear Creeks without application of the dilution rule requirements. The Commission discussed the proposed change with Mr. Gasik and Ms. Schroeder.

After consideration, Commissioner Williamson moved that the Commission approve the City of Ashland's request to modify its dilution rule waiver, and approve the findings proposed in Attachment A of the Department's staff report. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

D. Action Item: Air Toxics Science Advisory Committee

Andy Ginsburg, DEQ Air Quality Division Administrator, and Bruce Hope, DEQ Air Quality Specialist, recommended that the Commission concur with the Director's nomination of seven individuals to serve on the Department's new Air Toxics Science Advisory Committee. Mr. Ginsburg explained that in October 2003, the Commission adopted rules to create Oregon's first state Air Toxics Program. The program was designed to target urban-area air toxic emissions from mobile and various small pollution sources and to complement the industrial focus of the federal program that DEQ has implemented since 1990. The state program takes a community-based approach by creating a framework for adopting concentration limits for certain pollutants, identifying high-risk areas of the state, and implementing local emission reduction plans. Mr. Hope explained that the Committee will provide DEQ with scientific and technical advice on developing the air toxics program in Oregon. The seven nominees included Dr. Catherine Neumann from Oregon State University, Dr. Bill Lambert from the Center for Research on Occupational and Environmental Toxicology at the Oregon Health and Sciences University (OHSU), Dr. Brian Patterson from a Secor (a Tualatin consulting firm), Candice Hatch from Bridgewater Group (a Portland consulting firm), Dr. Patricia Toccalino from the Oregon Graduate Institute at OHSU, Dr. Kent Norville from Air Sciences, Inc. (a Portland consulting firm), and Natalia Kreitzer from the Southwest Clean Air Agency in Vancouver, Washington.

After discussion, Commissioner Hampton moved that the Commission concur with the Director's nominees for the Air Toxics Science Advisory Committee. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

E. Rule Adoption: Proposed Noise Rules for Wind Energy Facilities

Mike Grainey, Director of the Oregon Office of Energy, presented proposed changes to state noise control regulations, designed to streamline the application of noise standards to wind energy facilities and make the rules easier to administer. Mr. Grainey explained that wind and other forms of renewable energy can reduce the amount of pollution that otherwise would occur by using fossil-fueled power plants. The special characteristics of wind energy facilities were not taken into account when state noise control rules were adopted in 1974, however. As a result, complying with the rules is more complicated and costly for wind energy facilities than for other industrial sources and competing types of electric generating facilities. Mr. Grainey stated that the proposed rules would maintain protections for noise sensitive areas without unnecessarily constraining the development of renewable energy sources. He summarized public comments on the rules and discussed changes with Commissioners.

After discussion, Commissioner Mark Reeve suggested amending the proposed rules to add the word "property" to Oregon Administrative Rule 340-035-0035(1)(b)(B)(iii)(III) as follows:

(III) The noise levels from a wind energy facility may increase the ambient statistical noise levels L10 and L50 by more than 10 dBA if the person who owns the noise sensitive property executes a legally effective easement or real property covenant that benefits the property on which the wind energy facility is located.

Commissioner Malarkey moved that the Commission adopt the revised rules as proposed and amended by the Chair. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

F. Informational Item: Preparing for the Start of Agent Operations at the Umatilla Chemical Agent Disposal Facility

The Commission heard briefings from Don Barclay, Site Project Manager for the U.S. Army, and Doug Hamrick, Project General Manager for Washington Demilitarization Company, on site activities in preparation for beginning chemical agent operations at the Umatilla Chemical Agent Disposal Facility (UMCDF). Mike Parker, Director of the Army's Chemical Materials Agency, briefed the Commission on the Army Headquarters' review and approval process and its status. Mark Evans, President of Washington Demilitarization Company, and Lieutenant Colonel Doc Holliday, Depot Commander, spoke briefly about the anticipated start of chemical agent operations at UMCDF this summer. Commissioners discussed key permit requirements with the presenters.

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

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, gave the Commission a general update on the status of the UMCDF and the Department's work with the permittees to prepare for the start of agent operations.

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

Dennis Murphey and Sue Oliver, DEQ Senior Hazardous Waste Specialist, gave an overview of the Commission's approval process for authorizing the start of agent operations at the UMCDF.

H. Action Item: Umatilla Chemical Agent Disposal Facility Permit Modification for Carbon Filters

Dennis Murphey and Sue Oliver presented the Department's recommendation that the Commission approve the Class 3 Permit Modification Request (UMCDF-03-041-PFS(3)) to change the point of compliance for incinerator emissions at the UMCDF. Mr. Murphey explained that the permittees had requested the proposed change in September 2003 to modify the UMCDF Hazardous Waste Storage and Treatment permit. If approved, the modification would establish compliance with permit limits using the air pollutant levels as measured after the carbon filter system, the final stage of the UMCDF incinerator pollution abatement systems. As originally issued, the UMCDF permit required that emissions compliance be determined before flue gases passed through the carbon filters. Ms. Oliver described the proposed permit changes in detail and discussed options with the Commissioners.

After discussion and consideration, Commissioner Williamson moved that the Commission approve the proposed permit modification as presented in Attachment A of the staff report, and approve the draft order provided in Attachment B of the staff report. Commissioner Malarkey seconded the motion and it passed with four "yes" votes. Chair Reeve acknowledged Ms. Oliver's efforts on this long and important project. Other Commissioners agreed and expressed their appreciation.

At approximately 5:15 p.m., Chair Reeve adjourned the regular meeting for the day. At 5:45 p.m., the Commission had dinner with DEQ staff at Fontaine's, located at 845 North First Street in Hermiston.

At 7:00 p.m., the Commission held a public hearing at the Hermiston Community Center to take comments on the proposed start of chemical agent operations at the UMCDF. Before taking testimony, Chair Reeve asked Sue Oliver, DEQ Senior Hazardous Waste Specialist, to explain the process for taking comment on the proposed start of chemical agent operations. Ms. Oliver explained that the Department opened the public comment period on May 4, 2004, and issued a compliance assessment summarizing the permit requirements for starting agent operations at the facility. She stated that twenty-eight of the permit requirements remained undone at the time of the hearing. Ms. Oliver encouraged audience members to submit comments to the Department before the close of the public comment period on June 7, 2004.

Approximately 200 people attended the hearing and the following people testified.

- Evelyn Jensen, a legislative aide for State Representative Bob Jensen, expressed support for the safe incineration of chemical weapons and her belief that DEQ had done its job in ensuring safety.
- James Wenzl, representing his family who lives in Hermiston, expressed support for incinerating the weapons to remove the hazardous chemical agents to leave a positive legacy for his children.
- Julia Holland agreed with Mr. Wenzl's testimony.
- Meg Capps, Umatilla County Emergency Response Manager, described her community's efforts to prepare for a potential emergency and expressed her support for starting the destruction of chemical weapons as soon as possible.
- Bill Howard, from the Umatilla-Morrow County CSEPP program, explained his community's plans for responding to the unlikely event of a chemical emergency and expressed his support for starting the destruction of chemical weapons as soon as possible.
- Dennis D. Doherty, Umatilla County Commissioner, expressed his support for starting agent operations as soon as possible.
- Tiah Estabrook, Hermiston community member with three small children, asked that chemical agent operations begin in September when children are back in school, because the schools are prepared to respond in the event of an emergency and ensure the children's safety.
- Elaine Benton agreed with Mr. Wenzl's testimony.
- Stephanie Johansen, a past resident of Hermiston, expressed support for starting agent operations to reduce the risk of continued storage.
- Armand Minthorn, member of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, read a Board resolution in support of the start of agent operations when the Army has proven compliance with all requirements of the DEQ hazardous waste storage and treatment permit.
- Deb Stockman, Hermiston resident, expressed support for starting agent operations on behalf of herself and her family.
- Randall Kowalke, Hermiston resident, expressed support for starting agent operations.
- Susan A. Ash, expressed agreement with Ms. Stockman and Mr. Wenzl.
- Frank Harkenrider, expressed his support for starting agent operations as soon as possible.
- George Hash, Umatilla Mayor, expressed his support for incineration because the Army and community are ready and because it is the safest way to reduce the risk posed by the chemical weapons.
- Vikki Born, an employee of Washington Demilitarization Company, speaking as a Hermiston resident, expressed support for the start of chemical agent destruction on behalf of her husband and children.
- Harmon Springer, Hermiston resident and member of the Hermiston City Council, expressed his support for the destruction of the chemical agents as soon as possible.

- David Wallick, Hermiston resident, presented comments from his seven year old son in support of destroying the chemical agents.
- Kathy Siron, Hermiston resident, expressed support for starting chemical agent operations as soon as possible to reduce the risk of storage and make her community safe.
- Guy M. Lovelace, Hermiston resident, expressed concerns on behalf of his family about the risk of continued storage of chemical weapons at the Umatilla Depot, and confidence in the incineration facility and its operators to safely destroy the weapons.
- Karyn J. Jones, representing GASP, the Oregon Wildlife Federation, the Sierra Club and plaintiffs in the GASP lawsuit, expressed opposition to incineration of chemical weapons, and support for a decision by the Commission to deny approval for the start of chemical agent operations and to revoke the permit for the UMCDF.
- Stuart Dick, third generation Eastern Oregonian, expressed a number of concerns relating to the UMCDF permit and current plans for destroying chemical weapons and monitoring emissions at the facility.
- Susan L. Jones, Hermiston resident, teacher, and member of the GASP Board, expressed concern about dioxins and the health of the people in the community, and opposed incineration of chemical weapons.
- J.R. Wilkinson, GASP researcher, expressed concern about a number of UMCDF permit requirements and urged the Commission to revoke the permit and consider whether incineration is the right approach.
- Rusty Brewer, Hermiston resident, expressed his support for incineration and his desire to see chemical agent destruction begin soon.
- T.J. Rodriguez, fourth generation Oregonian, expressed support for starting the destruction of chemical weapons at the UMCDF as soon as possible.

Chair Reeve thanked the people who testified and the audience members who attended to hear the testimony. He asked people to continue to send written comments to the Department before the June 7, 2004, close of the public comment period, and stated that the Commission was currently scheduled to make a decision on starting chemical agent operations at the UMCDF at their July 15-16, 2004 meeting.

Friday, May 21, 2004

The Commission reconvened at the Hermiston Community Center on Friday morning, and Chair Reeve called the meeting to order at approximately 9:00 a.m. Agenda items were taken as follows.

J. Director's Dialogue

Stephanie Hallock, DEQ Director, discussed current events and issues involving the Department and the state with Commissioners.

K. Action Item: Consideration of Pollution Control Facilities Tax Credit Requests

Helen Lottridge, DEQ Management Services Division Administrator, and Maggie Vandehey, DEQ Tax Credit Program Coordinator, presented recommendations on tax credit applications for facilities that control air and water pollution, recycle solid and hazardous waste, reclaim plastic products, and control pollution from underground fuel tanks. Ms. Lottridge explained that in 1967, the Oregon Legislature established the Pollution Control Facility Tax Credit Program to help businesses meet environmental requirements. The program was later expanded to encourage investment in technologies and processes that prevent, control or reduce significant amounts of pollution. In 1999, facilities that control nonpoint sources of pollution (such as wood chippers) were made eligible for the program. Ms. Vandehey gave an overview of the Department's recommendations on tax credit requests, including approval of seventeen tax credit applications, denial of application number 6260, correction of tax credit certificate number 6562, and revocation of certificate numbers 4312, 4515, 10073 and 10083.

After discussion, Commissioner Malarkey moved that the Commission approve the seventeen tax credit applications recommended for approval by the Department. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

Commissioner Hampton moved that the Commission deny application number 6260 as recommended by the Department. Commissioner Williamson seconded the motion and it passed with four "yes" votes.

Commissioner Williamson moved that the Commission correct certificate number 6562 as recommended by the Department. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

Commissioner Malarkey moved that the Commission revoke certificate numbers 4312, 4515, 10073 and 10083 as recommended by the Department. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

Ms. Vandehey presented a tax expenditure liability report and explained the potential impact of the Commission's tax credit certifications on future state revenues. Ms. Vandehey also presented the Department's certified wood chipper tax credit report.

Andy Ginsburg, DEQ Air Quality Division Administrator, presented the results of a DEQ survey of people who had recently received a wood chipper tax credit. The survey was designed to determine the effectiveness of the credit as an incentive for reducing open burning and protecting air quality. Mr. Ginsburg reported that based on survey results, the credit was an effective tool in reducing air pollution. Chair Reeve thanked Mr. Ginsburg and the Department for conducting the study.

L. Temporary Rule Adoption: To Address Inconsistencies between the Pollution Control Facilities Tax Credit Law and Rules

Helen Lottridge and Maggie Vandehey proposed a temporary rule to address inconsistencies between the pollution control facilities tax credit statutes and rules relating to filing deadlines. Ms. Lottridge stated that the tax credit statutes changed in 2001 to shorten the application filing time from two years to one year after construction of a facility is substantially completed. DEQ rules stated that an application must be filed within two years of completion. Ms. Vandehey explained that the proposed temporary rule would eliminate this inconsistency immediately, and if adopted, the DEQ would begin formal rulemaking to make the change permanent.

After consideration, Commissioner Hampton moved that the Commission adopt the proposed temporary rule and authorize the Director to sign the Statement of Need and Justification on the Commission's behalf. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

M. Informational Item: DEQ's 2005-2007 Budget Request

Director Hallock gave the Commission an overview of DEQ's 2005-2007 budget request and solicited policy guidance from Commissioners on key budget issues and priorities. Paul Siebert, from the Oregon Legislative Fiscal Office, briefed the Commission on statewide budget issues and the budget climate predicted for the 2005 legislative session. Commissioners discussed budget planning with Director Hallock and Mr. Siebert, and asked for a second briefing on DEQ's budget development at the July 15-16, 2004 Commission meeting. Director Hallock stated that the Department would prepare for the July briefing and ask the Chair to approve DEQ's 2005-2007 budget request in August on the Commission's behalf.

Public Forum

At approximately 11:45 a.m., Chair Reeve invited members of the audience to provide general comments to the Commission. The following person provided testimony.

Armand Minthorn, member of the Confederated Tribes of the Umatilla Indian Reservation Board of Trustees, read a statement from the Board in opposition to the Commission's decision to approve new water quality toxics standards for Oregon. He expressed particular concern about the 17.5 grams per day fish consumption rate used to derive the human health criteria for toxics, and the effect of the decision on the health of Oregon's most sensitive populations and the general public. Mr. Minthorn made a number of

specific requests to the Commission regarding the decision, and discussed the Board of Trustees' concerns with Commissioners and Director Hallock. Chair Reeve thanked Mr. Minthorn for his comments and stated that the Commission would respond to the Board's requests as quickly as possible.

N. Informational Item: Update on Performance Partnership Agreement with EPA

Helen Lottridge, DEQ Management Services Division Administrator, briefed the Commission on the development of DEQ's 2004-2006 Performance Partnership Agreement and Grant (PPA/PPG). Ms. Lottridge explained that DEQ was negotiating a PPA/PPG with the U.S. Environmental Protection Agency (EPA) for State Fiscal Years 2005 and 2006 to serve as the work plan for many of the federal grants that support DEQ's air quality, water quality and hazardous waste programs. The agreement, which will be finalized in June, describes how DEQ and EPA will work together to protect Oregon's environment. Commissioners discussed the agreement with Ms. Lottridge and Director Hallock.

O. Commissioners' Reports

Commissioners gave no reports.

Chair Reeve adjourned the meeting at approximately 12:30 p.m. and the Commission held a working lunch with DEQ staff to discuss scheduling of upcoming Commission activities.

Water Quality Standards Review Policy Advisory Committee and Agency Advisors membership and affiliation.

Name	Organization
Pat Amadeo, Chair	unaffiliated
Nina Bell	Northwest Environmental Advocates
Sharon Beck	Oregon Cattlemen's Association
Bill Gaffi/Charles Logue	Association of Clean Water Agencies
Sherri Groh	Confederated Tribes of the Siletz Indian Reservation
Chris Jarmer	Oregon Forest Industries Council
John Ledger	Associated Oregon Industries
Karen Lewotsky	Oregon Environmental Council
Peter Ruffier	League of Oregon Cities
Aubrey Russell	Oregon Trout
Glen Spain	Pacific Coast Federation of Fishermen's Associations
Pete Test/Jean Wilkenson	Oregon Farm Bureau
Kathryn VanNatta	Northwest Pulp and Paper Association
Agency Advisors	
Dru Keenan	EPA
Rick Kepler	Oregon Department of Fish and Wildlife
David Leland	Oregon Health Services
Robert Anderson	National Marine Fisheries Service/NOAA-Fisheries
Elizabeth Materna	US Fish and Wildlife Service

Toxics Technical Advisory Committee membership and Affiliation.

Name	Affiliation
Ken Kauffman, Reg. Sanitarian	Oregon Department of Human Services
Rick Johnson, PhD	Oregon Graduate Institute
Joan Rothlein, PhD	Center for Research on Occupational and Environmental Toxicology, Oregon Health and Science University
Jeff Jenkins, PhD	Oregon State University
Deke Gundersen, PhD	Pacific University
Jennifer Orme Zavaleta, MS	EPA
Steve Kolmes, PhD	University of Portland
Gene Foster, PhD	Oregon DEQ
Martin Fitzpatrick, PhD, Chair	Oregon DEQ

1999-2004 Water Quality Standards Review Chronology and Documentation

Date	Description	Document Title	Type of document
11/8/99	Letter of appointment of Rick George, CTUIR, to DEQ Water Quality Standards Policy Advisory Committee (PAC)	11/8/99 letter from Director Langdon Marsh to Rick George, CTUIR	letter
12/14/99	First PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda (planning document).	12/14/99 DEQ WQ Standards PAC Meeting Summary	meeting summary
3/17/00	Second PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda (planning document).	3/17/00 DEQ WQ Standards PAC Meeting Summary	meeting summary
9/7/00	Third PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda (planning document on technical committees).	9/17/00 DEQ WQ Standards PAC Meeting Summary	meeting summary
1/17/01	Fourth PAC meeting summary showing members in attendance (CTUIR alternate present). Toxics criteria on agenda (workplan review).	1/17/01 DEQ WQ Standards PAC Meeting Summary	meeting summary
2/6/01	email from DEQ to PAC chair indicating concern that CTUIR representative Rick George unable to attend any of first four PAC meetings, but Mr. George indicated intention to attend March 01 PAC meeting.	2/6/01 Deb Sturdevant email to Pat Amedeo	email
3/16/01	Fifth PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda.	3/16/01 DEQ WQ Standards PAC Meeting Summary	meeting summary
5/10/01	Sixth PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda (PAC decision on DEQ review strategy).	5/10/01 DEQ WQ Standards PAC Meeting Summary	meeting summary
6/29/01	email from DEQ inviting Warm Springs Tribes (CTWS) to serve as member of PAC.	6/29/01 Deb Sturdevant email to Brad Nye, CTWS	email
7/9/01	email from DEQ to CTWS representative confirming attendance at next PAC meeting	7/9/01 Deb Sturdevant email to Brad Nye, CTWS	email
7/12/01	Seventh PAC meeting summary showing members in attendance (no	7/12/01 DEQ WQ Standards PAC Meeting	meeting summary

Date	Description	Document Title	Type of document
	tribal representative present). Toxics criteria on agenda.	Summary	
9/13/01	Eighth PAC meeting (no quorum). Draft summary indicates no tribal representative present. Toxics on agenda	no official meeting summary (draft only).	draft meeting summary
10/11/01	Ninth PAC meeting summary showing members in attendance (CTWS representative present). Toxics criteria on agenda but not discussed.	10/11/01 DEQ WQ Standards PAC Meeting Summary.	meeting summary
11/1/01	CTWS member indicates likely withdrawal from PAC due to taking a job outside the tribe.	11/5/01 Brad Nye email to Deb Sturdevant inclusive of email train.	email
11/8/01	Tenth PAC meeting summary showing members in attendance (no CTWS representative present)	11/8/01 DEQ WQ Standards PAC Meeting Summary.	meeting summary
12/20/01	CTWS indicates continued participation in PAC	12/20/01 Robert Brunoe email to Deb Sturdevant	email
1/2/02	email from new CTWS PAC member to DEQ indicating that he will be joining the PAC	1/2/02 Rich Pyzik email to Deb Sturdevant	email
1/24/02	Eleventh PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on agenda.	1/24/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
2/21/02	Twelfth PAC meeting summary showing members in attendance (no tribal representative present).	2/21/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
2/28/02	email from DEQ to CTUIR inviting CTUIR to rejoin the PAC indicating that PAC will be focusing on toxics criteria.	3/7/02 Deb Sturdevant email to CTUIR's Rick George inclusive of email train	email
4/1/02	Thirteenth PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on the agenda.	4/1/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
4/19/02	letter from DEQ to CRITFC inviting CRITFC to appoint a member to the PAC (hand-written note in margin indicates CRITFC declined)	4/19/02 letter from Director Stephanie Hallock to CRITFC Executive Director Don Sampson.	letter
	notes on potential tribal representatives for PAC membership	handwritten notes—no date	notes
7/10/02	Fourteenth PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on the agenda.	7/10/92 DEQ WQ Standards PAC Meeting Summary	meeting summary
8/22/02	Fifteenth PAC meeting summary	8/22/02 DEQ WQ	meeting

Date	Description	Document Title	Type of document
	showing members in attendance (no tribal representative present). Toxics criteria on the agenda.	Standards PAC Meeting Summary	summary
10/23/02	Sixteenth PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on the agenda.	10/23/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
11/22/02	letter from DEQ appointing PAC membership to representative of the Confederated Tribes of the Siletz Indians (CTSI).	11/22/02 letter from Director Hallock to CTSI's Sherri Groh	letter
12/2/02	Seventeenth PAC meeting summary showing members in attendance (CTSI representative present). Toxics criteria on the agenda.	12/2/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
2/25/03	Eighteenth PAC meeting summary showing members in attendance (CTSI representative present). Toxics criteria status report on the agenda.	2/25/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
4/22/03	Nineteenth PAC meeting summary showing members in attendance (CTSI representative not present). Toxics criteria status report on the agenda.	4/22/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
5/19/03	Notice of Proposed Rulemaking "Revise Water Quality Criteria for Toxic Pollutants—Clean Water Act" mailed to CTUIR (and other tribal representatives) seeking public comment between June 1, 2003 to August 1, 2003.	Certificate of Mailing and Address Listkey	signed certificate and address list printout
6/24/03	Twentieth PAC meeting summary showing members in attendance (CTSI representative present). Toxics criteria not on the agenda.	6/24/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
7/21/03	CTUIR requests extension of comment period on proposed toxics criteria rule.	7/28/03 email from Deb Sturdevant to Marty Fitzpatrick inclusive of email train	email
7/23/03	Twenty-first PAC meeting summary showing members in attendance (CTSI representative present). Toxics criteria not on the agenda.	7/23/03 DEQ WQ Standards PAC Meeting Summary	draft meeting summary
7/31/03	DEQ extends comment period from 8/1/03 to 8/29/03 and notifies interested parties.	Postcard notice and Address Listkey.	postcard and address list printout
8/20/03	DEQ meets with CTUIR and their consultants on 8/20/03 to hear their	8/14/03 email from CTUIR Kathleen Feehan	email

Date	Description	Document Title	Type of document
	concerns about the proposed toxics rule	to Marty Fitzpatrick discussing logistics	
August 29, 2003	CTUIR submits comments during public comment period	8/29/03 email from CTUIR's Rick George to Mike Llewelyn "CTUIR Comments - ODEQ WQS Draft Revisions"	email and attached pdf file
September 4, 2003	Twenty-second PAC meeting summary showing members in attendance (CTSI alternate present). Toxics criteria update on the agenda.	9/4/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
November 12, 2003	Twenty-third PAC meeting summary showing members in attendance (CTSI representative not present). Toxics criteria update on the agenda.	11/12/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
May 20, 2004	EQC adopts WQ criteria rules for toxics. CTUIR makes comments during Public Forum.	Oregon Environmental Quality Commission Minutes of the Three Hundredth and Eighteenth Meeting	meeting minutes

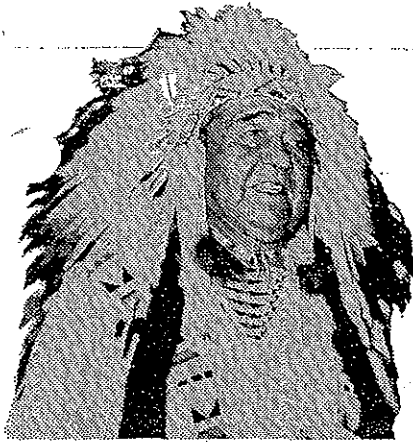
1999-2004 Water Quality Standards Review Chronology and Documentation

Date	Description	Document Title	Type of document
11/8/99	Letter of appointment of Rick George, CTUIR, to DEQ Water Quality Standards Policy Advisory Committee (PAC)	11/8/99 letter from Director Langdon Marsh to Rick George, CTUIR	letter
12/14/99	First PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda (planning document).	12/14/99 DEQ WQ Standards PAC Meeting Summary	meeting summary
3/17/00	Second PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda (planning document).	3/17/00 DEQ WQ Standards PAC Meeting Summary	meeting summary
9/7/00	Third PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda (planning document on technical committees).	9/17/00 DEQ WQ Standards PAC Meeting Summary	meeting summary
1/17/01	Fourth PAC meeting summary showing members in attendance (CTUIR alternate present). Toxics criteria on agenda (workplan review).	1/17/01 DEQ WQ Standards PAC Meeting Summary	meeting summary
2/6/01	email from DEQ to PAC chair indicating concern that CTUIR representative Rick George unable to attend any of first four PAC meetings, but Mr. George indicated intention to attend March 01 PAC meeting.	2/6/01 Deb Sturdevant email to Pat Amedeo	email
3/16/01	Fifth PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda.	3/16/01 DEQ WQ Standards PAC Meeting Summary	meeting summary
5/10/01	Sixth PAC meeting summary showing members in attendance (CTUIR representative absent). Toxics criteria on agenda (PAC decision on DEQ review strategy).	5/10/01 DEQ WQ Standards PAC Meeting Summary	meeting summary
6/29/01	email from DEQ inviting Warm Springs Tribes (CTWS) to serve as member of PAC.	6/29/01 Deb Sturdevant email to Brad Nye, CTWS	email
7/9/01	email from DEQ to CTWS representative confirming attendance at next PAC meeting	7/9/01 Deb Sturdevant email to Brad Nye, CTWS	email
7/12/01	Seventh PAC meeting summary	7/12/01 DEQ WQ	meeting

Date	Description	Document Title	Type of document
	showing members in attendance (no tribal representative present). Toxics criteria on agenda.	Standards PAC Meeting Summary	summary
9/13/01	Eighth PAC meeting (no quorum). Draft summary indicates no tribal representative present . Toxics on agenda	no official meeting summary (draft only).	draft meeting summary
10/11/01	Ninth PAC meeting summary showing members in attendance (CTWS representative present). Toxics criteria on agenda but not discussed.	10/11/01 DEQ WQ Standards PAC Meeting Summary.	meeting summary
11/1/01	CTWS member indicates likely withdrawal from PAC due to taking a job outside the tribe.	11/5/01 Brad Nye email to Deb Sturdevant inclusive of email train.	email
11/8/01	Tenth PAC meeting summary showing members in attendance (no CTWS representative present)	11/8/01 DEQ WQ Standards PAC Meeting Summary.	meeting summary
12/20/01	CTWS indicates continued participation in PAC	12/20/01 Robert Brunoe email to Deb Sturdevant	email
1/2/02	email from new CTWS PAC member to DEQ indicating that he will be joining the PAC	1/2/02 Rich Pyzik email to Deb Sturdevant	email
1/24/02	Eleventh PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on agenda.	1/24/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
2/21/02	Twelfth PAC meeting summary showing members in attendance (no tribal representative present).	2/21/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
2/28/02	email from DEQ to CTUIR inviting CTUIR to rejoin the PAC indicating that PAC will be focusing on toxics criteria.	3/7/02 Deb Sturdevant email to CTUIR's Rick George inclusive of email train	email
4/1/02	Thirteenth PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on the agenda.	4/1/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
4/19/02	letter from DEQ to CRITFC inviting CRITFC to appoint a member to the PAC (hand-written note in margin indicates CRITFC declined)	4/19/02 letter from Director Stephanie Hallock to CRITFC Executive Director Don Sampson.	letter
	notes on potential tribal representatives for PAC membership	handwritten notes—no date	notes
7/10/02	Fourteenth PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on the agenda.	7/10/92 DEQ WQ Standards PAC Meeting Summary	meeting summary

Date	Description	Document Title	Type of document
8/22/02	Fifteenth PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on the agenda.	8/22/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
10/23/02	Sixteenth PAC meeting summary showing members in attendance (no tribal representative present). Toxics criteria on the agenda.	10/23/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
11/22/02	letter from DEQ appointing PAC membership to representative of the Confederated Tribes of the Siletz Indians (CTSI).	11/22/02 letter from Director Hallock to CTSI's Sherri Groh	letter
12/2/02	Seventeenth PAC meeting summary showing members in attendance (CTSI representative present). Toxics criteria on the agenda.	12/2/02 DEQ WQ Standards PAC Meeting Summary	meeting summary
2/25/03	Eighteenth PAC meeting summary showing members in attendance (CTSI representative present). Toxics criteria status report on the agenda.	2/25/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
4/22/03	Nineteenth PAC meeting summary showing members in attendance (CTSI representative not present). Toxics criteria status report on the agenda.	4/22/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
5/19/03	Notice of Proposed Rulemaking "Revise Water Quality Criteria for Toxic Pollutants—Clean Water Act" mailed to CTUIR (and other tribal representatives) seeking public comment between June 1, 2003 to August 1, 2003.	Certificate of Mailing and Address Listkey	signed certificate and address list printout
6/24/03	Twentieth PAC meeting summary showing members in attendance (CTSI representative present). Toxics criteria not on the agenda.	6/24/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
7/21/03	CTUIR requests extension of comment period on proposed toxics criteria rule.	7/28/03 email from Deb Sturdevant to Marty Fitzpatrick inclusive of email train	email
7/23/03	Twenty-first PAC meeting summary showing members in attendance (CTSI representative present). Toxics criteria not on the agenda.	7/23/03 DEQ WQ Standards PAC Meeting Summary	draft meeting summary
7/31/03	DEQ extends comment period from 8/1/03 to 8/29/03 and notifies interested parties.	Postcard notice and Address Listkey.	postcard and address list printout

Date	Description	Document Title	Type of document
8/20/03	DEQ meets with CTUIR and their consultants on 8/20/03 to hear their concerns about the proposed toxics rule	8/14/03 email from CTUIR Kathleen Feehan to Marty Fitzpatrick discussing logistics	email
August 29, 2003	CTUIR submits comments during public comment period	8/29/03 email from CTUIR's Rick George to Mike Llewelyn "CTUIR Comments – ODEQ WQS Draft Revisions"	email and attached pdf file
September 4, 2003	Twenty-second PAC meeting summary showing members in attendance (CTSI alternate present). Toxics criteria update on the agenda.	9/4/03 DEQ WQ Standards PAC Meeting Summary	meeting summary
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CONFEDERATED TRIBES
of the

Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code 541 Phone 276-3165 FAX 276-3095

Good morning. Members of the Commission, Director Hallock and DEQ staff.

My name is Armand Minthorn and I am a member of the Confederated Tribes of the Umatilla Indian Reservation Board of Trustees. I deliver these words to you today on behalf of the Board of Trustees.

I am not here today for newspaper coverage. I am not here today to complain. I am not here to criticize. I am here today to give comment from the highest level of Tribal Government – our Board of Trustees on the decision you made yesterday to adopt the revised water quality standards for toxics as proposed by the Department of Environmental Quality. Yesterday the EQC approved water quality standards based upon a fish consumption rate that will not protect tribal people and many other people in this state.

I like you am not an expert in toxicology or risk assessment or water quality standards. That is why I choose to speak to you today.

As your staff indicated to you yesterday, basing your toxic standards upon a consumption rate of 17.5 grams per day reflects the policy choice of not protecting what was termed the "more sensitive populations" like tribal people. It is important to note that tribal people are not the only Oregonians that this decision chooses not to protect. Also left out are other "sub-populations", generally ethnically defined, that live both in rural Oregon and in our cities. Pregnant and nursing women are also outside of the protections. As are young children. And as you discussed yesterday, we believe that 17.5 grams per day does not protect a substantial segment of the general population of Oregon because Oregonians eat more fish than your average resident of Kansas.

I am here before you today to ask that you do a couple of things for us that will better inform yourselves and us, and assist in bringing us into a collaborative process to better understand the impacts and results of yesterday's decision.

Basically what I ask of you is focused upon trying to bring information to you that was not provided in yesterday's staff report. For though I agree with you that your staff did an excellent job of presenting a very complicated subject, there were also gaps in the information provided.

For instance – what are the human health implications of yesterday's decision? To get at that answer I ask that you allow time on your next agenda to hear from your state health department experts on what the toxicological and human health

implications are of a 17.5 gram per day rate. On the general population, on tribal people and other Oregonians and on young children and pregnant and nursing mothers. I think it is important that you do what you can to understand the implications of yesterday's decision – and I know for me a good way to comprehend that is to look at our mothers and our children.

Secondly, and related to this, I ask that ask your staff a the next EQC meeting to report to you the results they project on the increased amounts of bio-accumulative toxic chemicals that will be allowed to enter the fish and our collective diets as a result of yesterday's decision. Related to health implications, it is important to understand how much additional exposure and long-term accumulations will result.

I also ask that you communicate your decision to implement these standards and how some Oregonians are protected and some are not to those populations and people that are not protected. I think that is incumbent on the Department of Environmental Quality to reach out to the Oregonians that are left out of human health protections and notify them of such.

I also ask that you request a more urgent level of action from the Department to fund and implement a study to determine an accurate fish consumption rate for Oregon. I ask that you do that in partnership with us. I commit to you that we will get the money, from federal, tribal, private sources to complete this study as the emergency action that it really is.

Lastly I want to tell you what my Tribal Government will now do in response to your action yesterday. We value our relationship with Oregon and with DEQ – we consider one of the best Tribal Government – State relationships in the country. As such, you have put us in a difficult spot. Our only means of recourse is to do what your staff outlined yesterday – work with EPA to see that the threats to our tribal member health and well-being are addressed. And we will do that. I want you to know that we do understand that you did yesterday raise the fish consumption rate

More important to you I think is what we will do with you as a state body. I've already outlined that earlier – we'd like to work with you to better understand the implications of adopting a fish consumption rate of 17.5 grams per day. Yesterday during your discussion the phrase a "huge safety factor" was used to illustrate how protective the existing science of risk assessment is. We agree that there are safety factors built in. Whether or not they are huge enough when compared to a real world risk assessment on Columbia River sturgeon that shows a cancer rate risk of 2 in 100 I don't know. I do know that it's not that simple. And I do know that for nursing mothers, my children and my grandchildren I NEED you to be more precise, more cautious and more deliberative.

The Confederated Tribes adamantly opposes the decision you made yesterday. We hope you will work with us to address it's implications.



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

503-229-5696

TTY 503-229-6993

June 15, 2004

Armand Minthorn
Member of the Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation
P.O. Box 638
Pendleton, OR 97801

Dear Mr. Minthorn:

On behalf of the Oregon Environmental Quality Commission, I am writing to express our appreciation for the comments you provided during the May 21, 2004 Commission meeting in Hermiston. The Environmental Quality Commission and the Department of Environmental Quality remain committed to the State/Tribal Government to Government Relations agreement established under former Governor John Kitzhaber. We realize that there is always opportunity for improvement in our communications, and the Department will strive to do a better job of engaging you and other tribal members in our work as we move forward.

At the May meeting, you provided formal testimony on behalf of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation expressing the Board's opposition to the Commission's decision to adopt revised water quality criteria for toxics as recommended by the Department. Specifically, you expressed concern about the protectiveness of the fish consumption rate of 17.5 grams/day upon which the criteria are based.

As you acknowledged in your testimony, the water quality toxics criteria adopted by the Commission at the May meeting are more protective than previous criteria for Oregon, and the 17.5 grams /day, which is the current federal standard, is more protective than Oregon's previous fish consumption rate. You also make clear, however, that the Confederated Tribes do not believe the 17.5 grams/day to be protective of sensitive populations.

In adopting the standards and the new toxics criteria, the Commission faced a difficult choice between accepting the current federal standards or going beyond them. In the end, the Commission followed the Department's recommendation to set the standard to protect the general population, based on national studies of fish consumption. In doing so, the Commission increased the protectiveness of Oregon's toxics standard nearly three times, as the current standard is far below general population fish consumption rates.

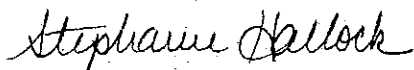
The Commission and the Department understand and appreciate the Tribes' concerns about bioaccumulation of toxic chemicals. I believe that in taking the action we did we moved Oregon's standards forward. We share your desire for improved fish consumption data that is more representative of Oregon and the Northwest, and we are committed to working with you,

state health officials, and the Environmental Protection Agency to conduct further studies to better inform future standards development.

Regarding your request that we explain the new standard to those who will be affected, my Water Quality staff who developed the toxics criteria and the Administrator of our Water Quality Division, Holly Schroeder, would be happy to make a presentation to the Tribal Council or to your staff and discuss the scientific basis of our work, as well as how we might work together in the future on this important issue. Please let me know if that is a discussion you would like to pursue.

Armand, we have known each other for many years, and I respect and value our professional relationship and friendship. This was a very difficult decision for our Commission, and I assure you that our Department remains committed to strong Government-to-Government partnership. Again, thank you for your comments and your commitment to protecting and improving water quality.

Sincerely,



Stephanie Hallock
Director

Cc:

James E. Brown, Governor's Natural Resources Policy Advisor
Members, Environmental Quality Commission
Holly Schroeder, Administrator, Water Quality Division, DEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

NOV - 3 2004

Reply To
Attn Of: OW-134Robert Baumgartner
Oregon Department of Environmental Quality
811 Sixth Avenue
Portland, OR 97204DEQ
NOV 05 2004

Dear Mr. Baumgartner:

This letter confirms and documents the agreements made during our conference call of September 13, 2004. The conference call was among Confederated Tribe of the Umatilla Indian Reservation (CTUIR), Oregon Department of Environmental Quality (ODEQ), and U.S. Environmental Protection Agency (EPA) Region 10. The purpose of the conference call was to acknowledge the concerns the CTUIR has raised to EPA Region 10 and ODEQ over the fish consumption rate used by Oregon to calculate revised toxic criteria, and to initiate a joint effort to resolve the CTUIR's concerns over Oregon's revised toxic criteria.

By way of background, Oregon recently adopted and submitted to EPA revised water quality criteria for toxic pollutants. EPA's responsibility under the Clean Water Act is to review the submittal and approve or disapprove the criteria. Oregon's revised toxic criteria are based on a revised fish consumption rate of 17.5 grams/day (up from 6.5 g/d).

This 17.5 g/d fish consumption rate, the national default rate for fish consumers and non-consumers in the general adult population, is one of several default rates included in current EPA guidance. EPA guidance also contains a national default value for subsistence fishers of 142.4 g/day and values for children and for women of childbearing age. EPA guidance offers all of these values for fish consumption as possibilities for States and authorized Tribes to consider when deciding on which population to focus protection. EPA guidance emphasizes that States and authorized Tribes should consider developing criteria to protect highly exposed population groups and use local or regional data over the default values as more representative of target population groups. The Columbia River Intertribal Fish Commission (CRITFC), in partnership with EPA, conducted a fish consumption survey of the CRITFC tribal members and found a fish consumption rate of 389 g/d (at the 99th percentile). The CTUIR is now planning to adopt 389 g/d as its fish consumption rate for purposes of revising their tribal water quality criteria for toxic pollutants.

EPA also has responsibilities to have regular and meaningful consultation with Indian Tribal governments when developing policies and regulatory decisions on matters affecting their communities and resources. As a part of this consultation responsibility, the CTUIR has raised concerns to EPA that Oregon's fish consumption rate would result in greater risk to tribal members. After preliminary discussions held separately with the CTUIR and the ODEQ, EPA initiated the September 13 conference call to seek agreement among the parties to work together to find a mutually satisfactory solution. In addition to reaching agreement to work together, the parties on the call discussed potential options to pursue in future work sessions.

Based on the discussion during the call, and confirmed with this letter, the CTUIR, ODEQ, and EPA Region 10 commit to working together to move forward to address the concerns expressed by CTUIR to EPA on fish consumption rates in Oregon's recently adopted criteria. Further, EPA agrees to seek funding for a facilitator/mediator acceptable to both parties, and to research whether similar fish consumption rate issues have been addressed elsewhere throughout the U.S. EPA is also prepared to work with ODEQ to explore ways to more effectively control toxics. Finally, EPA agrees to provide leadership and support to the effort to resolve the problem.

Four additional activities were sketched out on the call that all agreed to help develop potential solutions. We all recognize that one or more or other options may be pursued in the end. The activities are:

1. ODEQ will meet with the Oregon Health Division in coordination with EPA and CTUIR to identify how the Division decides on fish consumption advisories, how they consider risk for more exposed population groups using local or regional data, and what regulatory controls are used to control risk.
2. As the CTUIR proceeds to revise their toxic criteria, the State would look to the CTUIR's leadership on the issue.
3. ODEQ would seek to reduce the risk by identifying sources of toxic discharges and then developing more protective means to reduce sources. This work would include exploring the path Idaho and EPA are currently pursuing to develop permit protocols for point sources discharging toxics.
4. ODEQ would explore developing site specific criteria.

Additional issues were raised on the call. With respect to the scope of the effort, EPA said that for now it would be specific to Oregon waters that support CTUIR tribal fishing and at a later date may be expanded to the whole Columbia basin. EPA explained that this effort may be the first time the Agency has had to address the disparity between state and tribal fish consumption rate and thus needed to be sensitive to the precedence this effort may represent. With respect to timing, the Umatilla representatives asked ODEQ representatives if the parties were able to reach agreement on a path forward, would ODEQ contemplate the implementation of that solution within 6 to 9 months timeframe. ODEQ representatives responded that they would need to check with management.

I appreciate the willingness of both the CTUIR and ODEQ to work together to seek resolution to this important problem. At this time I am requesting that each of your organizations respond to this letter, in writing, to confirm agreement with the above course of action. I have asked Mary Lou Soscia to work with you to schedule our next meeting in early December. Please contact me at 206-553-7151 or Mary Lou Soscia at 503-326-5873.

Sincerely,



Michael F. Gearheard
Director, Office of Water and Watersheds

Enclosure

cc: Martin Fitzpatrick, ODEQ
Kathleen Feehan, CTUIR

Umatilla Tribe Toxics Reduction Effort Workplan
Draft #1 (m/s) - February 24, 2005

1. Track 1: Toxics Reduction Track

Purpose: To move forward on specific toxic reduction actions. This track may include short term track toxics reduction through NPDES permitting actions and the implementation of specific management practices. On a more long term track this may include the identification of priority areas for legacy toxics and future sediment remediation planning efforts

- a. Identify geographic areas important to Tribe
 - i. Mainstem Columbia River from Bonneville Dam upstream to Washington boundary.
 - ii. Willamette River from/including Willamette Falls downstream to confluence with Columbia River.
 - iii. The North Fork, Middle Fork and South Fork John Day Rivers
 - iv. Willow Creek
 - v. Umatilla River
 - vi. Walla Walla River
 - vii. Snake River from Washington/Oregon boundary upstream to Hells Canyon Dam and Imnaha River
 - viii. Grande Ronde River, Wallowa River and Minam River
 - ix. Develop GIS system for waters with the following data layers
 - (1) Waters
 - (2) Fish that are consumed and have toxics
 - (3) NPDES permits
 - (4) land use activities including agriculture, forestry, mining
 - (5) RCRA sites
 - (6) other toxic sources - Hanford, Umatilla Depot, others??
 Who: EPA, CTUIR and DEQ
- b. I.D. chemicals that drive risk to fish and to people who eat those fish
 - i. EPA is currently working with DEQ to identify a list of the chemicals of concern using available data including the EPA Columbia River Fish Contaminant Study

Lead: EPA and DEQ
When: by March 4.
- c. Identify available short term control strategies to reduce toxic discharges
 - i. Identify control strategies through NPDES permitting
 - (1) Review NPDES permits to identify potential toxic reductions actions

Lead - DEQ

(2) *As permits are renewed DEQ would incorporate higher fish consumption rates in the allowable toxics discharge???*

ii. Identify control strategies through from other sources

(1) Identify sources and potential management practices

(2) Implement Pilot Project to Implement Toxics Reduction/Control Effort

(a) Identify geographic location based on waters and toxics

Who: DEQ, EPA and CTUIR

When: March 31st

(3) Identify a funding source

Who: DEQ, EPA and CTUIR

When: March 31th

(4) Convene a working group to develop, design and lead implementation for a toxics reduction project. Members would include CTUIR, EPA, DEQ, OR Dept of Health, NRCS, *others???*

(a) Meet bi-weekly initially to scope, design and develop project

(b) Meet monthly as project is underway

(c) Include monitoring as essential component

Who: DEQ, EPA and CTUIR

When: First meeting by April 15th

d. Identify available short term control strategies to reduce toxic discharges

i. Identify priority legacy toxic locations in Columbia River Basin - Long Term

(a) Acquire funding for monitoring for hot spot identification

(b) Implement monitoring effort

(c) Analyze data

(d) Identify hot spots

Who: DEQ, EPA, CTUIR, others

When: Begin scoping effort by June 2005

2. Track one: Oregon Environmental Quality Commission Track

Purpose: To seek EQC position on potential rule change on toxics criteria. (The next Commission meeting is scheduled for April 21 - 22 in Boardman, Oregon. Invitation has been extended to CTUIR in recent letter.)

a. Step 1. What to talk to Commission about:

i. Use a staff report to articulate issues on fish consumption rate

(1) Participate with DEQ in development of Staff Report

Who: EPA, Tribe, DEQ

When: by end of March

(2) Each party contributes what information and policy questions to take to Commission

Who: Tribe & DEQ (Kathleen and Bob working together)

When: by end of March

(3) Each party is involved in identification of policy issues

b. Step 2. Start dialogue on the issues with Commission on potential standard change

When: April 21 - 22



CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. Box 638
PENDLETON, OREGON 97801
Area Code 541 Phone 276-3165 FAX 276-3095

January 27, 2005

Stephanie Hallock, Director
Oregon Department of Environmental Quality
811 Sixth Avenue
Portland, Oregon 97204

**Re: Conf. Umatilla Tribe's Challenge of ODEQ-Proposed Fish Consumption
Rate/Toxic Water Quality Standards Criteria**

Dear Director Hallock:

I am writing this letter in anticipation for our joint meeting next week (February 2, 2005) with policy and legal staff of Governor Kulongoski regarding the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) challenge of Oregon's July 8, 2004 Oregon Water Quality Standards revisions proposal submittal to the U.S. Environmental Protection Agency (EPA).

As you know CTUIR has, since 2003, objected to the use of the Oregon Department of Environmental Quality (ODEQ) proposed fish consumption rate of 17.5 grams per day because in our opinion it intentionally discriminates against members of the CTUIR. Our own fish consumption survey, consulted during the Department's Technical Advisory Committee deliberations, document fish consumption rates that are up to 20 times higher than the 17.5 grams/day rate. As your Department indicated during the May, 2004 Environmental Quality Commission meeting, the ODEQ-recommended fish consumption rate leaves about 80% of our tribal members unprotected from fish-born chemical toxins.

We have attempted to engage your office in negotiations with us and EPA since 2003. We appreciate Deputy Director Paul Slyman's involvement in our negotiations last week. However as we approach the February 15, 2005 date set by ODEQ for automatic implementation of the Department's fish consumption rate and related water quality criteria for toxins, we must request that you determine your course of action now. Specifically, we request that you advise in writing the U.S. EPA Region 10 and CTUIR that you will delay beyond February 15, 2005 implementation of the fish consumption rate and related criteria for chemical toxins, until you revisit the issue with the Environmental Quality Commission and determine whether or not to revise this portion of the proposed standards package revisions.

It is my sincere hope that we can resolve this issue during or immediately after our meeting next week with the Governor's staff. My recent meeting with the Board of Trustees reaffirmed that the CTUIR considers this issue to be of the highest order of significance in our good working relationship with Oregon. We believe this action of discriminatory standards is not consistent with the Governor's relationship with our Tribe and not consistent with his agenda for Oregon.

Sincerely,



Donald Sampson
Executive Director

cc: David Reese
Mike Carrier
MardiLyn Saathoff
CTUIR Board of Trustees
Mike Gearheard
Socorro Rodriguez
Kathleen Feehan
Rick George
Chris Burford
Olney Patt, Jr.

**Timeline of the Confederated Tribes of the Umatilla Indian
Reservation Consultations about Oregon Water Quality Standards
Criteria for Toxics and Fish Consumption Rate**

July 25, 2003	Letter to EPA requesting consultation on OR water quality standards revisions.
August 20, 2003	CTUIR staff meet with DEQ staff, communicate concerns that fish consumption rate in OR proposal not protective of tribal people. Request government to government consultation consistent with SB 770.
August 2003	DEQ Telephone communication to CTUIR staff that there would be no opportunity for consultation beyond public comment period.
August 29, 2003	Comment letter submitted to DEQ on Water Quality Standards Revisions. Among comments objection to fish consumption rate for toxics criteria.
May 20, 21, 2004	DEQ presents revised standards to Environmental Quality Commission. Commission approves. Some members express concern about low fish consumption rate. Armand Minthorn submits "public comment" tribal concerns.
July 8, 2004	DEQ submits standards revisions to EPA for approval or disapproval.
August 5, 2004	CTUIR Les Minthorn and staff meet with EPA Mike Gearheard, Socorro Rodriguez and staff. Begin consultation on OR standards.
September 3, 2004	EPA Mike Gearheard meets with CTUIR Board of Trustees.
September 13, 2004	Conference call meeting between CTUIR staff, EPA and DEQ. DEQ won't clarify if they are considering revising standards.
October 11, 2004	Letter from Antone Minthorn to EPA summarizing points of understanding and principles for progress from Board of Trustees meeting with EPA.
November 3, 2004	Letter from EPA Mike Gearheard to both CTUIR staff and DEQ staff summarizing call and identifying areas for further work.
December 22, 2004	Letter from EPA Mike Gearheard to CTUIR Board of Trustees - confirming EPA responsibility to consult, EPA guidance on fish consumption rates, 6 -9 month time frame for resolution, resolution must address real solutions, resolution may include concurrent efforts.
January 20, 2005	EPA Mike Gearheard, Socorro Rodriguez and staff, CTUIR staff, and DEQ staff meeting. DEQ won't clarify if they are considering revising standards. Tasks developed to help understand effects of potential standards changes.
February 15, 2005	DEQ revised standards become active, will be applied for permitting and other purposes under state law unless EPA disapproves.



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY 503-229-6993

February 11, 2005

Donald Sampson
Executive Director
Confederated Tribes of the Umatilla Indian Reservation (CTUIR)
P.O. Box 638
Pendleton, OR 97801

Dear Director Sampson,

Thank you for your letter of January 27 and for the discussion with the Confederated Tribes of the Umatilla Indian Reservation Board of Trustees on February 2 regarding the fish consumption rate underlying DEQ's recently revised water quality standards. Clearly this is an important issue for the Tribes, and we are committed to continuing our Government-to-Government dialogue.

As you know, the standards adopted by the Environmental Quality Commission (EQC) in May 2004 have been submitted to the US Environmental Protection Agency (USEPA) for approval. These standards have an effective date of February 15, 2005, as adopted by the EQC in rule. As I indicated in our meeting on February 2, I do not believe it is in the best interest of all Oregonians to withdraw our submittal to EPA or to extend the effective date. The revised standards significantly improve the old rules and present an important step forward in DEQ's efforts to reduce toxic substances in the environment.

When the EQC took action to adopt these water quality standards in May 2004 they were very concerned about the testimony presented by Armand Minthorn about the actual fish consumption rate of some Tribal members. The record shows that some Commission members would have felt better about adopting a standard based on a fish consumption number derived for the Pacific Northwest general population, rather than EPA's 17.5 grams standard for the general population of the United States.

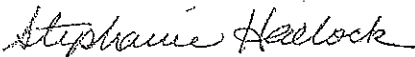
At the time of the May decision, DEQ indicated to the EQC that we were pursuing resources from EPA to study Regional fish consumption. Unfortunately, funds were not available, so while the Tribes have much data to support Tribal fish consumption rates, there is little to no data for other populations in Oregon or the Pacific Northwest.

After the February 2 discussion with the Tribes and Governor's office representatives, I spoke with the Environmental Quality Commission members about the Tribes' request for revisiting the fish consumption rate. The Commission is disappointed that EPA could not identify funds for a Regional study and is interested in hearing more discussion on the fish consumption rate. DEQ and the Commission do, however, feel that USEPA has a duty and an obligation to take action on the water quality standards which we submitted for approval as required by the Clean Water Act, regardless of ongoing communication between the Tribes and the state on the matter.

The Commission will be meeting in Boardman on April 21 and 22. They asked that I extend to you an invitation to participate in a Government-to-Government conversation so that they can hear directly and in more detail Tribal concerns and recommendations regarding the fish consumption rate. We will also invite representatives of the USEPA to attend and explain actions the federal government is taking to resolve this issue. We will share specific meeting details as they are developed with your staff. Time will be provided during the Commission's regularly scheduled Public Forum for others to speak briefly on the matter, as DEQ and the Commission must consider input from all Oregonians in rulemaking matters.

As I expressed to Armand Minthorn in a letter last June, I respect and value our professional relationship and friendship, and I am committed to a strong Government-to-Government partnership with the Confederated Tribes of the Umatilla Indian Reservation. It is my hope and the hope of the Environmental Quality Commission that the USEPA will take the actions they are required to take by the Clean Water Act, and that whatever that action may be, we can continue a productive dialogue among all parties to make the best decision for Oregon.

Sincerely,



Stephanie Hallock
Director

Cc: Environmental Quality Commission
David Reese, Governor's Office
Mike Carrier, Governor's Office
Mike Gearheard, USEPA
Socorro Rodriguez, USEPA
Rick George, CTUIR

State of Oregon
Department of Environmental Quality

Memorandum

Date: April 22, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Director's Dialogue

NEDC Settlement and Bundling of Stormwater Permits

At present all NPDES general permits are issued by the Commission as rules. The Northwest Environmental Defense Center (NEDC) challenged the Department's 1200-Z permit for industrial stormwater that was issued in 2002. DEQ settled that litigation in December 2004 by agreeing to *propose* certain revisions to the permit and to the process for assigning facility's coverage under the permit. Since many of these same issues exist with the other general permits, and since the other general permits have expired or will expire in 2005, DEQ agreed to propose these revisions to the other permits as well. For administrative efficiency, DEQ plans to reissue these permits in a single rulemaking process (aka in a bundle).

We expect to submit six general permits addressing industrial stormwater for your consideration at the December 2005 meeting. These six permits cover at least 2,500 sources.

We have completed an initial round of ten informal meetings with all affected stakeholders and are now working on the actual revisions to these six permits. We plan to distribute these draft revisions to interested stakeholders for informal comment in May and proceed to formal notice and comment rulemaking in July and August.

Drought Report for 2005

To date, this has been one of the lowest snow/rain water years in Oregon's history. According to the state climatologist, only two years out of the past fifty have been drier than this one. While recent rains brought March precipitation up to normal in some areas of the state, January and February were extremely dry. The Cascades snowpack is 29% of average normal snowpacks for the end of March.

In mid March, the Willamette dropped below 4,000 cubic feet per second (cfs) at Albany. This is the minimum summer flow target to protect water quality (i.e., the minimum flow for the river before water quality standards for dissolved oxygen, temperature, algae, pH, and even some toxic pollutants are likely to be exceeded). The river was at 6,500 cfs in Salem due to the Santiam flows. The minimum summer target flow for Salem is 4,500.

Although stream flows have temporarily recovered due to the recent rains, they are still expected to decline below the low levels observed in March as the spring and summer progress. Water

currently stored in reservoirs is being stored to provide as much summer flow as possible. How much will depend on rainfall in April and May.

Eight Oregon counties have declared drought emergencies, including Baker, Coos, Crook, Gilliam, Hood, Klamath, Morrow, Sherman and Umatilla. More will likely follow suit. The State Drought Council is considering whether to recommend that the Governor declare a state-wide emergency. The Council intends to monitor the spring rains before moving forward with such a recommendation.

From March 28 to March 31, the U.S. Army Corps of Engineers held four public meetings in the Santiam watershed area (Oakridge, Detroit, Sweet Home, and Eugene).

We are in the process of issuing a letter asking our point sources to voluntarily move to summer limits (due to low dilution). If conditions worsen, DEQ may need to declare an emergency and modify permits to compel the summer limits early and possibly extend these limits into the fall (after the date when they would normally be relaxed for the wet season).

We are in close contact with the Oregon Water Resources Department, the Oregon Department Fish and Wildlife, and the Army Corps of Engineers and have weekly meetings to monitor these flows.

We have also requested, through a letter from the Governor's Natural Resource Office to the Corps, to undertake water quality sampling during the extreme low flow conditions anticipated this summer.

The next meeting of the Drought Council is scheduled for 1:30 pm on April 26, 2005 in Salem.

Study of Acid Rain in the Gorge

The U.S. Forest Service recently released a study of acid deposition in the Columbia Gorge. (See Oregonian article dated April 5, 2005, attached.) The USFS research is an important part of a much larger multi-year study to understand air pollution issues in the Gorge. DEQ and the Southwest Clean Air Agency will be completing this larger study over the next few years. The study involves evaluating emission sources both east and west of the Gorge, including the Portland/Vancouver area, the Columbia Plateau, North Central Oregon and the Boardman power plant. The study will provide the scientific foundation to work with Gorge area communities on options for protecting air quality. The USFS research gives an interesting first snapshot of acid deposition risk in the Gorge, but much more study is needed to understand the full air quality story.

Sandy River TMDL Status

The Sandy River Basin Total Maximum Daily Load was signed as a Department Order and submitted to EPA for their approval on March 10, 2005.

The Sandy River originates from glaciers on the western slopes of Mt Hood and travels 56 miles before flowing into the Columbia River near the City of Troutdale. Its waters provide outstanding recreational opportunities and a majority of the drinking water supply for the

Portland metropolitan area. Portions of the Sandy Basin are water quality limited for temperature and bacteria. Highlights of the TMDL include:

- The PGE dams in the basin are schedule for removal in 2007-2008, which should result in significant improvement in stream temperature in the reach below Marmot Dam.
- Portland's Bull Run Water Supply received a numeric temperature target based upon observed Little Sandy River stream temperatures. The City will release water from their reservoirs in such a way as to mimic natural stream temperatures in the lower Bull Run River, a dramatic improvement over conditions that have existed since the dams were constructed. Approximating the Little Sandy stream temperatures in the Lower Bull Run will require a significant commitment by the City. The fact that the City of Portland Water Bureau has committed to achieving the temperature standard, increasing flows in the Lower Bull Run and working in partnership to address habitat concerns within the basin is significant.
- This will be the first TMDL submittal to EPA that incorporates the new temperature standard.

Greg Geist and Ryan Michie were responsible for the TMDL and Avis Newell was responsible for negotiations with Portland General Electric.

DEQ Facilitates \$3.1 Million in Settlements at Two Cleanup Sites

Milwaukie International Way: Pursuant to an administrative order issued by DEQ in 1999, DEQ is overseeing investigation of soil and groundwater contaminated with chlorinated volatile organics at the Milwaukie International Way Site, in Milwaukie, Oregon. At least one of the responsible parties named in the administrative order has commenced cleanup, but funding for the interim remedial measures (IRM) has been difficult due to the uncertainty with respect to the full liability for the cleanup. As a result of negotiations with the potentially responsible parties, DEQ proposed a consent judgment requiring parties not named in the 1999 administrative order to pay \$2.175 million into a DEQ account dedicated to the IRM work. In return for this payment, DEQ covenants not to sue the settling parties, and those parties receive contribution protection against third parties regarding the contamination. The consent judgment requires the funds to be placed into a DEQ account by April 16, which will provide stable funding for continued implementation of the IRM.

Abe's Dry Cleaning Facility: On March 21, 2005, DEQ settled its claims against the defendants in our litigation to recover remedial action costs incurred at the former Abe's Dry Cleaning facility located in Milwaukie. In 1992, DEQ discovered illegally disposed dry cleaning waste at the facility. DEQ undertook enforcement action to get the property owner and facility operator to complete investigation and cleanup of the site. Upon passage of the Oregon Dry Cleaner Law, which provides funding for remediation of eligible dry cleaning facilities, the owner stopped work. DEQ then declared the site an orphan facility and proceeded to complete investigation and cleanup using DEQ contractors. From 1998 to 2002, DEQ contractors conducted investigation and cleanup of the site, removing approximately 1,000 pounds of the dry cleaning solvent tetrachloroethylene (PCE) from soil and groundwater beneath the site. After public notice DEQ issued a conditional No Further Action decision. DEQ litigation has been ongoing during the

cleanup activities. The U.S. Ninth District Court of Appeals ruled in DEQ's favor that the owners/operators were liable and not protected under the Oregon Dry Cleaner statutes. DEQ has incurred approximately \$1,250,000 in costs for investigation and cleanup, including legal costs for cost recovery. DEQ agreed to accept \$925,000 to settle the case rather than further litigating full recovery of its costs from the liable parties.

Environmental Council of the States (ECOS) Spring Meeting

I am currently the Vice President of ECOS and attended the annual Spring meeting in Washington, DC last week. I met with Congressional staffers on the Hill and with EPA officials to discuss budget cuts to states included in the President's budget for EPA. The Administration wants to phase out the wastewater and drinking water revolving loan funds, and significant cuts are proposed. It is expected that Congress will add some back, but states (notably the National Governor's Association) are so consumed with cuts to Medicaid and other programs, that this is not on their top list of concerns. The rest of the EPA cuts (\$71 million) are from the State and Tribal Assistance Grants (STAG) and not from EPA itself, which engendered some conversation. One of the lessons taken from this visit is that ECOS needs to form a stronger direct relationship to the Office of Management and Budget (OMB), which we will do. OMB is currently putting EPA and the states through rigorous assessments in the air and water programs that could result in funding cuts to programs that fail. I am scheduled to return to DC in May for a session with EPA on the 2007 strategic plan and budget, and to meet with representatives of OMB to discuss all of these issues.

Global Warming/California Vehicle Emission Standards (Recent Developments)

On February 4th, we provided you with a briefing on the Governor's work group on Global Warming and Oregon's greenhouse gas reduction strategy. The final report from the Governor's work group was delivered to the Governor on March 25th. On April 14th the Governor announced his intention to move forward on several of the greenhouse gas recommendations including the formation of a task force to develop a plan for implementing California's motor vehicle emission standards (LEV/Pavley). DEQ will be coordinating with Governor's office and is ready to support the Governor's task force.

In the Oregon legislature, Senator Charlie Ringo, chair of the Senate Committee on Environment and Land Use, has sponsored SB 344. The bill, which had a hearing on March 25th, would direct the EQC to adopt regulations implementing California motor vehicle emission standards beginning with the 2009 model year. The hearing drew a large number of commenters, including the Automobile Alliance and the American Lung Association, so the public debate on adopting California standards in Oregon has begun. DEQ supports efforts to reduce emissions of greenhouse gases but could not formally support SB 344 because the fiscal impact was not included in the Governor's Recommended Budget.

Washington State's efforts to adopt California vehicle standards: The Washington Senate has approved a bill adopting California vehicle standards; however, the Senate version significantly differs from the initial version of the bill passed by the House. The two versions have yet to be reconciled. Two key differences.

- The House version would begin California standards in Washington with the 2009 model year (if Oregon adopts for 2009) and in 2010 regardless of what Oregon does. In the Senate version, California standards do not go into effect at all in Washington unless Oregon also adopts California standards.
- The Senate version eliminated the part of the California standards that requires the sale of Zero Emission Vehicles (ZEV). The ZEV requirement is an integral part of the California standards, so eliminating the ZEV component could violate the federal requirement that states adopt California's vehicle standards "exactly" and could leave Washington's vehicle standards at risk of legal challenge.

Legislative Update – see attachment

The Oregonian

Scenic and acidic

Caustic rain and fog lash the Columbia Gorge in winter, research finds

Tuesday, April 05, 2005

MICHAEL MILSTEIN

The Columbia River Gorge, protected as a national scenic area for its rocky landscapes and natural vistas, endures acid rain and fog as severe as what falls in industrial East Coast regions.

Air pollution from Eastern Oregon and Washington laces gorge clouds with some of the nation's highest levels of certain harmful compounds, turning fog and drizzle nearly as acidic as vinegar, new federal research shows.

Acid brews as air funnels west through the gorge in winter, bringing exhaust from cars, trucks, trains, power plants, cattle feedlots, factories and other sources to the east. Clouds absorb the pollution and deposit it through the gorge, mainly in acid fog droplets.

"We were definitely surprised how high these numbers were," said Mark Fenn, an air quality researcher who oversaw the study for the U.S. Forest Service. "We can't say when the trees will start to show detrimental effects, but definitely the soil chemistry is changing, and the effects are beginning."

Acid fog poses special risk when it blankets Native American petroglyphs and pictographs hundreds or thousands of years old. Gorge moisture is commonly as acidic as rain known to be eroding revered buildings and monuments in Washington, D.C.

Volcanic rocks in the gorge have a different composition, so it's unclear how vulnerable they are. But regional tribes said they're convinced their cultural sites, as well as plants and wildlife they depend on for food, have been harmed.

"If it destroys rock, what does it do to the animals, the birds, the vegetation, the humans?" said Clifford Casseseka, cultural specialist for the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation. "They're not really looking at the big picture."

Signs of trouble

The yawning canyon won federal protection in 1986 as a national scenic area, but it's clogged with some of the worst pollution of all protected areas in the West. Haze from the Portland and Vancouver urban areas west of the gorge muddies scenic views in summer, but winds shift in winter to bring pollution from the east.

Forest Service researchers knew fouled air was killing sensitive species of lichen, while hardier species spread like weeds. They also have found lead, a toxic heavy metal, in lichen tissue at levels four times as high as nearby national forests.

Until now, teams hadn't studied rain and fog that drip pollution to the ground in winter.

The interstate Columbia Gorge Commission directed air quality agencies in 2000 to create a regional strategy to protect and clean up the air. But the Washington Department of Ecology dropped out of the effort when it ran short of money. The Oregon Department of Environmental Quality cited budget cuts in postponing the project and is close to cutting funds further.

A strategy remains years away, with no deadline. Oregon officials suggest they may not need to take any action because a shift toward cleaner fuels eventually could clear the air on its own.

"It may be that a strategy will not be necessary," said David Collier of the DEQ.

He said the acid rain findings offer "a good first glimpse" of air problems, but he cautioned against jumping to conclusions. Other studies and analysis will continue until mid-2007, when officials hope to decide what to do next.

"The commitment is there, but we have to have the information to make decisions," said Anne Squier, chairwoman of the Columbia Gorge Commission. "This tells us there's a problem, but it doesn't tell us where it's coming from."

However, tribes and conservation groups say agency inaction exposes the gorge to lasting damage.

"There's something very wrong, and we're not taking proper steps to address the problem," said Michael Lang, conservation director for Friends of the Columbia Gorge.

Sources to the east

Acid douses the gorge when clouds mix with pollution containing nitrogen and sulfur compounds.

Winter pollution enters the gorge from sources to the east such as vehicle exhaust and a Portland General Electric coal-fired power plant near Boardman that's one of the largest single producers of air pollution in the West, according to the new research. Other sources include cattle feedlots that release ammonia and growing urban regions such as the Tri-Cities and Spokane.

Researchers focused on the eastern gorge to detect contamination in prevailing winter winds entering that end of the long canyon. They gathered precipitation -- mainly fog -- in open areas and moisture dripping from ponderosa pines at 11 sites through the gorge over four months starting in November 2003.

The samples were tested for nitrogen, sulfur and ammonium, plus pH, a measure of acidity.

Typical Oregon rain has a pH slightly over 5, but the pH declines as it turns more acidic. Gorge pH values were commonly between 4 and 4.5, nearly 10 times more acidic than normal, and as low as 3.7, some 30 times more acidic. The results represent weeklong averages, so some daily samples were probably more acid than the readings indicate, said Robert Bachman, a Forest Service air quality specialist.

Eggs of many fish don't hatch when the pH of their water drops below 5. Rain around Pittsburgh, known for some of the worst acid rain in the country, averages about 4.3. Vinegar has a pH of about 3.

Picture incomplete

The acid rain is a hint of the nitrogen and sulfur concentrations that create it.

Nitrogen levels in gorge rain and fog during the four-month study were some of the highest known nationwide -- ranging from 11.5 to 25.4 kilograms per hectare. (A kilogram per hectare equals .89 pounds per acre.) The upper readings were about 10 times above levels expected in an entire year and would stand out even in the most polluted places in the country, such as the Los Angeles Basin, Fenn said.

"Anyplace you go, 25 is extremely high," he said.

The monitoring found spikes in pollution caused by pulses of air from the east, Bachman said.

Had gorge pollution been measured for a full year, the levels probably would have been even more striking.

Northeastern states where trees and fish and have suffered from acid rain commonly receive about 12 kilograms of nitrogen per hectare, Fenn said. Environmental damage such as die-off of lichen is known to occur in the West at levels above 3, with wider damage to soils and trees beginning above 10 to 15.

"You start seeing more effects as the rates go higher," he said.

Nitrogen initially can act as fertilizer. But soon it begins to overwhelm and stress trees and plants. Soils turn acidic, and nitrogen leaks into streams carrying heavy metals toxic to fish.

"On the surface it might sound like a good thing, but it really is too much of a good thing because it makes the whole system susceptible to other problems," Fenn said.

Streams flowing down the walls of the gorge mainly begin at higher elevations, so they may not be exposed to acid levels within the gorge for long periods. The vast volume of the Columbia River also dilutes pollution. But little research exists to measure direct effects on gorge waters or wildlife.

Stressed trees might become more vulnerable to insects, for instance. Although pines have died in the eastern gorge, it's not clear whether that's connected to pollution. Damage to trees may depend on how much acidity soils can withstand.

Researchers don't know how the acid precipitation is affecting gorge soils, Bachman said.

"You can assume from what has happened in other places that similar things are going on here," he said. "You just don't know to what extent. If you disturb one element of the ecosystem, you often start a chain reaction."

Michael Milstein: 503-294-7689; michaelmilstein@news.oregonian.com

ACID RAIN IN THE GORGE

The same wind tunnel effect that makes the Columbia River Gorge a windsurfing mecca also makes it a cauldron for acid rain and fog. Air drawn into the gorge from the east carries pollution. It combines with clouds to form acid conditions as severe as those that have damaged forests and wildlife in other parts of the country. The pH index below measures levels of acidity. The more acidic, the lower the pH.

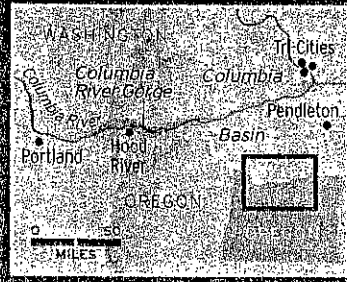
■ Acid rain levels ■ Levels in gorge

Fish eggs do not hatch

Erosion to buildings
Frogs die



Pure water Pure rain Vinegar Battery acid



Sources: U.S. Forest Service, U.S. Geological Survey, U.S. Environmental Protection Agency

ACID RAIN CYCLE

1 POLLUTION RISES

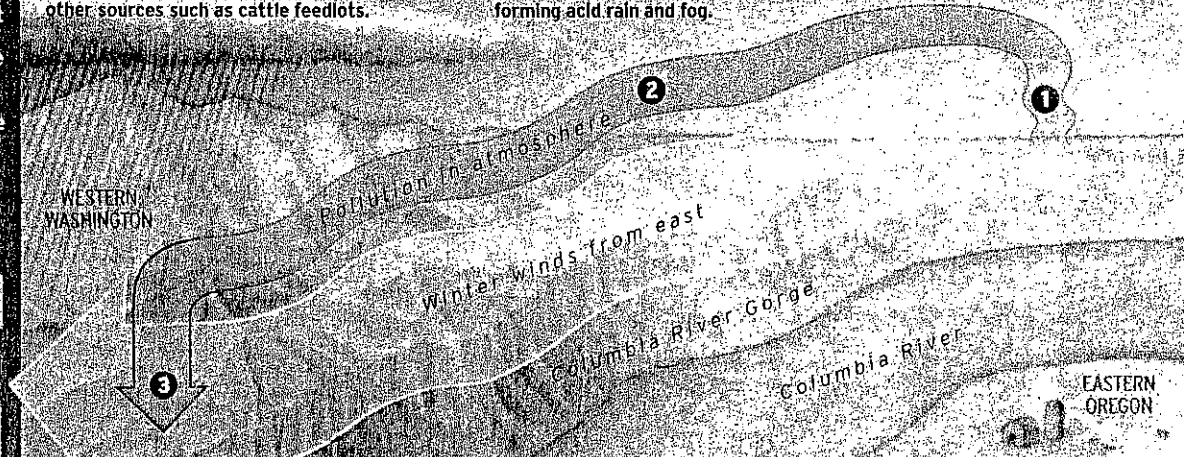
The process begins in the east, where exhaust from vehicles and power plants combines with other sources such as cattle feedlots.

2 MIXES WITH AIR

Nitrogen oxide, sulfur dioxide and ammonia react with moisture in clouds, forming acid rain and fog.

3 ARRIVES IN CLOUDS

Acid from fog droplets and drizzle collects on trees and other surfaces.



EFFECTS OF ACID RAIN

PEOPLE

Humans rarely suffer directly from acid rain. But the same pollution that creates acid rain contributes to respiratory and other human health problems.

FISH AND WILDLIFE

Watergoing life such as fish and amphibians are most sensitive and die off quickly when lakes and streams turn acidic.

FORESTS

Extremely acid rain singes leaves and needles. In lesser amounts, it soaks into soil, weakening trees so they die easily.

BUILDINGS

Acid precipitation at levels similar to those in the gorge have eaten away buildings in Europe and on the East Coast. Native American tribes fear petroglyphs in the gorge will meet the same fate.

ERIC BAKER/THE OREGONIAN

Legislative Update April 22, 2005

DEQ bills

Senate Bill 42 changes the Clean Water State Revolving Fund law to add about two to five years to the loan repayment term. The bill passed the Senate and has had one hearing in the House Environment Committee. We know of no opposition to this bill. Senate Bill 43 streamlines and updates the 1989 Toxics Use Reduction Law. The bill passed the Senate and has had one hearing in the House Environment Committee. We know of no opposition to this bill.

Senate Bill 44 extends the sunset of the existing fee that funds federally required work to prevent leaks and contamination from underground storage tanks. The bill passed the Senate Environment and Land Use Committee and was referred to Ways & Means where it awaits action on DEQ's budget. This bill is supported by the association that represents tank fee payers.

Senate Bill 45 improves the stability and accountability of the water quality permit program by authorizing an annual fee increase up to three percent to help cover costs, and require annual performance reports to the legislature, local government, businesses and the public. The bill passed the Senate Environment and Land Use Committee and was referred to Ways & Means. This bill is supported by industry, local government, and environmental groups, who were represented on the Blue Ribbon Committee that developed this bill and our wastewater permit budget proposal.

House Bill 5027 requests legislative ratification of several water quality fee changes adopted in rule by the Environmental Quality Commission in 2004. Fees to be ratified include fees for water quality certification under Section 401 of the Clean Water Act; a ministerial change to municipal storm sewer fees; and fee changes adopted as part of the septic system program changes. This bill will have a public hearing on April 20 in the Ways & Means Subcommittee on Natural Resources, but the legislature will not vote on this bill until it votes on our budget, in May or June at the earliest.

DEQ budget

In early February, we presented an overview of our programs, service delivery, performance measures and program priorities. In March, the Ways & Means Subcommittees discussed each agency's program priorities and in some cases made changes to the priority order. DEQ's Subcommittee ranked the Air Quality area source/toxics program and the Water Quality nonpoint source program as the lowest two priorities. DEQ will respond to this re-prioritization during our "Phase II" budget hearings scheduled for April 19 and 20 (see attached April 19, 2005 letter to the Subcommittee).

The Senate and House have released separate proposed budgets. The Senate Co-Chair budget proposes to reduce the Governor's Recommended Budget for DEQ by \$500,000, taking a one-time fund shift in cleanup debt service. The House Co-Chair budget also takes the one-time cut, and cuts DEQ's policy package to implement the Willamette River clean water plan (TMDL) -- a reduction of \$800,000 from the Governor's Recommended Budget.

During our Phase II budget hearing we will present information on our budget requests, outlined in the attached policy package spreadsheet. Public testimony on our budget will be taken on April 20. The Natural Resources Subcommittee will take action on DEQ's budget in May or June at the earliest.

Key legislative proposals

DEQ is tracking more than 100 bills. Many of those bills affect not just DEQ but all state agencies. This report includes the bills that are directed at DEQ's programs and have received the most attention. Although there are numerous bills about natural resources and the environment, the pace of legislation has been slow, with many committees holding one or more hearings but not taking action. One reason for this is the "split leadership" with the Senate controlled by the Democrats and the House controlled by the Republicans. Land use is at the top of the agenda for environmental legislation, with many bills introduced in the House and the Senate. Senate Bill 1037, an effort to amend Measure 37, has been developed by Senator Ringo working with interest groups, but it faces opposition from 1000 Friends of Oregon and other conservation groups.

Senate Bill 344, sponsored by Senator Ringo, directs the Environmental Quality Commission to adopt regulations implementing California motor vehicle emissions standards beginning with the 2009 model year. The bill has had one public hearing in the Senate Environment and Land Use Committee. DEQ supports actions to reduce greenhouse gas emissions, but cannot support this bill because its implementation requires funding that is not included in the Governor's Recommended Budget. The Governor recently announced that he will appoint a task force to determine how the State should implement stricter emissions standards for vehicles.

Senate Bill 555 is sponsored by Senate President Peter Courtney and is a priority bill for the Oregon Conservation Network, a coalition of environmental groups. This bill directs DEQ to phase out "mixing zones" that are currently authorized by EPA regulations and regulated by DEQ rules. More information on "mixing zones" is included in the attached fact sheet. This bill has had one hearing in the Senate Environment and Land Use Committee. The bill is modeled on mixing zone phase outs adopted by EPA for the Great Lakes, where mixing zones are supposed to be prohibited by March 23, 2007. Local governments and industry have expressed significant concerns about Senate Bill 555. DEQ cannot support this bill because its implementation requires funding that is not included in the Governor's Recommended Budget.

Senate Bill 652 directs DEQ to create a program to test for toxic substances in fish throughout the state. The bill has had one public hearing in the Senate Environment and Land Use Committee. DEQ testified that we support increased monitoring for toxics, but cannot support the bill because its implementation would require funding not included in the Governor's Recommended Budget. Environmental groups including OSPIRG testified in support of this bill.

Senate Bill 740 proposes an "advance disposal fee" on electronic equipment such as computers and printers, to be collected and disbursed to promote electronics recycling. The bill has had one hearing in the Senate Environment and Land Use Committee. Amendments are being drafted to streamline and simplify this bill.

House Bill 2664 is a "companion" to Senate Bill 555 and would require facilities with water quality permits that authorize mixing zones to mark these zones with buoys or sign postings. The bill has had one public hearing in the House Water Committee.

House Bill 2882 amends existing law regarding establishment of water quality standards, adding statutory references to natural factors and science. DEQ and the Department of Justice believe that this bill does not change how DEQ currently develops water quality standards, using quality assurance and quality control in our monitoring and sampling work. This bill passed the House Water Committee by a vote of 4 to 3. The Oregon Cattleman's Association and Northwest Pulp and Paper testified in support of this bill.

(Update on Ways and Means)

Mixing Zone Use in Oregon

What Are Mixing Zones?

A mixing zone is an area defined in a water quality permit where a permittee's wastewater discharge enters and "mixes" with a river or stream. The size of the area or "zone" where this discharge enters the water is defined in the permit and ranges in size based on how concentrated the wastewater discharge is, water quality standards, and size or flow of the waterbody.

Are Mixing Zones Legal?

Under federal rules the use of mixing zones can be defined by states. In Oregon mixing zones are allowed and practiced much like other states throughout the country.

What's DEQ's Policy on Mixing Zones?

- DEQ rules require that mixing zones be as small as feasible.
- DEQ will only allow a mixing zone when it does not harm the river or stream as a whole, kill organisms passing through it, or cause significant risk to human health.
- DEQ allows mixing zones for any type of pollutant.
- DEQ does not permit the use of mixing zones into lakes.
- DEQ is currently completing an Internal Management Directive which will provide greater detail and consistency when permit writers are evaluating permits and establishing mixing zones.

What do Other States Practice?

DEQ research has found that the use of mixing zones varies from state to state with most states allowing some form of mixing zones for wastewater discharge.

In 1995, the Environmental Protection Agency (EPA) adopted regulations (40 CFR Part 132) that affect 8 states bordering the Great Lakes. These regulations phase out the use of mixing zones for wastewater containing bioaccumulative chemicals of concern (BCCs), such as mercury, DDT, PCBs, and dioxins, discharged into the Great Lakes or streams and ditches entering the Great Lakes. EPA's regulations prohibit new wastewater discharge of BCCs and require the phase out of existing mixing zones by 2010. The regulations provide exceptions for promotion of

water conservation and consideration of technical and economic factors.

Do Mixing Zones Result In Toxic Pollution to Oregon's Waters?

When a mixing zone is set, DEQ ensures that there are no significant human health risks. A small portion of the stream in the immediate vicinity of the discharge point may experience some toxicity, but at levels that do not harm beneficial uses of the waterbody as a whole.

What Is DEQ Doing About Toxics In Water?

- In May 2004, the Environmental Quality Commission adopted water quality standards for toxic discharges into water. These standards are generally more stringent than the previous standards.
- DEQ issues water quality permits on a watershed schedule so pollution from all sources can be better identified and limited accordingly.
- DEQ requires pretreatment programs for communities receiving significant industrial discharge into sewer systems. These programs require cities to work with industries to reduce toxic discharges into the sewers.
- DEQ requires cities to prevent overflows of untreated sewage, which contain a variety of toxic pollutants, into Oregon's waters.
- DEQ uses the Total Maximum Daily Load program to determine how much of a pollutant a waterbody can handle and meet clean water standards. DEQ calculates how much pollution must be reduced from all sources in order to meet clean water standards.
- DEQ conducts special monitoring studies to determine sources and levels of toxic pollutants, and develops strategies to reduce them (e.g., mercury monitoring for the Willamette River).
- DEQ works with landowners on studies and voluntary changes to Best Management Practices (BMP) to reduce toxic discharges to water, such as work with orchardists in Hood River.



State of Oregon
Department of
Environmental
Quality

Last Updated: 2/27/05
By: Jim McCauley DEQ

DEQ 2005-07 Governor's Recommended Budget Policy Package List

Pkg #	Title	Limitation/Funding	FTE	Short Description
General Fund				
120	Restore and Enhance Wastewater Program	\$419,888 GF \$544,372 OF Phased fee increase 7% in 05; 4% in 06	Continue 4 existing FTE, add 1.25 FTE in mid-2006	Implements Blue Ribbon Committee recommendations. Continues 4 existing staff; adds staff to reduce wastewater permit backlog; issue permits by watershed; improve compliance & inspections; implement streamlining & accountability efforts.
121	Clean and Healthy Willamette River Basin	\$835,528 GF	4.5 FTE to continue Willamette River clean water plan	Carry out the Willamette River clean water plan (TMDL) by helping businesses and cities reduce pollution from their operations, stormwater runoff and mercury. Develop streamlined compliance procedures and assistance for small communities along the Willamette. Ensure that DEQ's innovative approaches meet tough legal review from EPA and third parties.
171 AQ 172 WQ 173 LQ	Laboratory Rent increase	\$137,526 AQ \$229,535 WQ \$22,973 LQ Total \$390,034 GF	...	DEQ reduced its 0507 debt service requirements by more than \$900,000, through good bond management. We request to shift this ongoing savings to pay for increased program costs incurred by relocating our Laboratory from existing space at PSU (approved by the 2003 Legislature). Without this funding, programs will have to reduce existing work to pay for increased costs.
Fees				
113	Continue LD Staff for Vehicle Inspection Program	existing \$21 fee; no fee increase	Continue 36 existing LD FTE	Maintain Vehicle Inspection Program
130	Maintain Underground Storage Tank Program	existing \$85 per tank fee; no fee increase	Continue 4.96 existing FTE	Funds federally required work to prevent leaks and contamination from gasoline storage tanks; allows DEQ to continue to seek delegation to implement the federal tanks law in Oregon.
Federal Fund				
123	Drinking Water Protection	\$584,491 federal grant as OF	Continue 3 existing LD FTE	Help communities protect public drinking water supplies.
126	Coastal beach bacteria monitoring	\$199,299 federal grant as OF	Add 1 LD FTE	Monitor Oregon's coastal beaches for bacteria pollution.
151	Environmental Information Exchange Network	\$304,464 federal grant	Continue 1.75 existing LD FTE	Allows completion of project to simplify and improve environmental reporting required by the federal EPA.
152	Homeland Security - Terrorism Response	\$662,365 federal grant as OF	Continue 1 existing LD FTE	Funds chemist and \$500,000 of specialized equipment to help DEQ, the Public Health Laboratory, Oregon State Police, and local responders plan, train, and implement Oregon's response to chemical terrorism events.
191	Clean Water State Revolving Fund - Bond Debt Service	\$9,010,000 OF	...	Debt Service for \$9 million bond sale that provides match for Federal grants below.
192	CWSRF - Loans CWSRF - Bond issue costs	\$30 M Federal as OF \$90,000		\$30 million in federal grants for low interest loans to local governments for wastewater treatment improvements. Cost to issue bonds

2007-09 impact of 0507 General Fund Policy Packages

Pkg #	Title	Funding	FTE	Short Description
120	Restore and Enhance Wastewater Program	\$79,245 GF \$118,868 OF	1.25 FTE	Data management improvements to complete implementation of Blue Ribbon Committee recommendations.
171 AQ 172 WQ 173 LQ	Laboratory Rent increase	\$1,300,000 is current est. rent increase from 0507 to 0709.	...	DEQ moves into new lab premises late in 0507. 0709 is the first biennium where the new lab rental rate applies for the full period. Lab rent increases beyond 0709 will be limited to operating cost increases, since the new level debt service to fund the construction COPs is already established.

April 19, 2005

The Honorable Susan Morgan
Chair, Ways & Means Natural Resources Subcommittee
900 Court St. NE Room H-178
Salem, OR 97301

Re: DEQ Response to Subcommittee's Re-Prioritization of Programs

Dear Representative Morgan:

On March 22 the Natural Resources Subcommittee tentatively identified DEQ's Air Quality Area/Toxics Program and Water Quality Nonpoint Source Program as low priorities (#17 and #18). DEQ prioritized these programs as #11 and #13 because they address the largest sources of air and water pollution in Oregon. As you finalize your priorities, I hope you will reconsider the significance of area/toxics and nonpoint source pollution.

Oregonians' daily activities, such as burning waste and fertilizing our lawns, create more than 80% of pollution. Without the Area/Toxics and Nonpoint Source programs, the public would be exposed to more pollution and industry would face an unfair share of the responsibility for pollution control.

What is the Air Quality Area/Toxics Program?

- 31% of air pollution in Oregon is from small "area sources" such as backyard burning, woodstoves, gasoline vapors at gas pumps, aerosol products, and commercial solvents.
- The Area/Toxics Program reduces pollution through regulation, technical assistance, incentives and public education. For example, restrictions on open burning near urban areas and incentives to use less-polluting products reduce particulate and smog pollution and protect people's health from toxic air pollution.
- Area sources account for 78% of air pollution reductions in Medford's plan to meet federal clean air standards. Area sources account for 18% of pollution reductions in Portland's plan to meet the federal smog standard.

There is a direct link between controlling air pollution from area sources and economic development. If increases in area source emissions result in violations of clean air standards, federal law automatically restricts industrial expansion and highway construction. Preventing emission increases from area and mobile sources is among the most important steps that DEQ can take to prevent new air quality regulations on industry.

DEQ's clean air budget has already been significantly reduced

The Governor's Recommended Budget cuts \$1.1 million in General Funds for clean air work and reflects a \$500,000 reduction in federal funds for air quality monitoring and a \$1.2 million shortfall in permit fee revenues. In 2005-07 DEQ will have 13 less staff doing clean air work.

April 19, 2005

Page Two

Loss of General Fund support for the Area/Toxics Program (\$3.1 million) would:

- Cut air quality monitoring in half
- Eliminate the State's response to illegal backyard burning

- Eliminate DEQ's visibility protection program
- Cut back work to reduce toxic air pollution from boilers, solvent use, coatings, waste disposal and other commercial activities
- Further delay development of local clean air plans
- Eliminate State support for the Lane Regional Air Pollution Authority
- Cut an additional 12 clean air staff

What is the Water Quality Nonpoint Source Program?

DEQ's Nonpoint Source Program works with federal, state and local agencies and communities and non-governmental organizations to control water pollution from surface water runoff. For example, we partner with the Department of Forestry to ensure that the State Forest Practices Act meets clean water standards, and with the Department of Agriculture on agricultural water quality plans. We also provide grants to local communities and non-governmental groups such as watershed councils. The Governor's Recommended Budget for this program budgets \$5.79 million for grants and contracts. Through these partnerships, DEQ and other agencies bring their respective expertise to reduce pollution through on-the-ground restoration projects.

DEQ receives about \$7.1 million per biennium in federal funds to support this work. If Oregon were to lose federal funds for nonpoint source work, those dollars would go back to the EPA and be redirected to other states.

Thank you for further considering the potential impacts of the subcommittee's prioritization of DEQ's programs.

Sincerely,

Stephanie Hallock
Director



State of Oregon
Department of
Environmental
Quality

**Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality Commission
April 22, 2005
(Agenda Item F)**

Umatilla Chemical Demilitarization Program

Permit Modification Requests (PMRs) for the Umatilla Chemical Agent Disposal Facility (UMCDF)

Since the last update, the Department has received the following PMRs of note:

- Class 2 PMR UMCDF-05-008-WAST(2)--proposes to designate specific areas inside the Munitions Demilitarization Building (MDB) as permitted hazardous waste storage areas to facilitate secondary waste processing. Currently, containers of secondary waste are transported to J-Block igloos for storage until they can be brought back to the MDB for final processing. This PMR was submitted on March 15 and the public comment period ends May 16.
- Class 2 PMR UMCDF-05-009-HVC(2)--proposes to delete all requirements related to changing out the first two banks of carbon in a MDB ventilation system carbon filter unit based on the detection of chemical agent downstream of the first carbon bank. Currently, the first two banks must be replaced within three months of detecting agent downstream of the first bank at a concentration above the short term exposure limit. This PMR was submitted on March 29 and the public comment period ends May 31.
- Class 2 PMR UMCDF-05-002-LIC(2)--proposes the operating requirements and conditions for conducting the GB agent trial burn (ATB) for Liquid Incinerator 2 (LIC2), and includes the LIC2 GB ATB Plan. Proposed operating requirements are based on the results of the LIC2 surrogate trial burn (STB) completed in August 2004. This PMR was submitted on February 15 and the public comment period ends April 18.

The Department has approved the following PMRs of note:

- On April 12, Class 2 PMR UMCDF-04-041-INSP(2)--updated the RCRA Inspection Plan to reflect operational experience gained during initial UMCDF agent operations, as well as the experience gained from other chemical demilitarization facilities.
- On March 31, Class 1 PMR UMCDF-05-012-DFS(1R)--approved request for additional deactivation furnace system (DFS) shakedown hours to complete preparations for the GB agent trial burn. Approved 400 additional hours instead of the requested 720 (which is the maximum additional hours allowed by regulation).
- On February 24, Class 1 PMR UMCDF-05-005-LIC(1R)--revised chemical agent sampling requirements to generate more accurate initial characterization results and increase the frequency of confirmation samples that are used to demonstrate continued compliance with maximum metals feed rates.

Agent Operations

From mid-March until the first week of April, no rocket processing was performed while UMCDF replaced the heated discharge conveyor (HDC) in the deactivation furnace system (DFS). Based upon the experience at the other chemical demilitarization facilities, the HDC is expected to require replacement after 12 – 18 months of service due to the stresses of high temperature operations. UMCDF had experienced a couple of occasions in March where the HDC jammed, so they made the decision to take an extended outage and replace the conveyor before proceeding further into DFS shakedown activities. They replaced the conveyor with a new metal alloy that is expected to last longer in service. However, they experienced binding problems with the new HDC after its installation, which required some additional adjustments before rocket processing resumed in early April.

As of April 11, 2005, the site had processed 10,874 GB rockets and destroyed approximately 112,000 lbs. of GB agent. This is twice the number of rockets the facility had processed at the time of the February 3, 2005, Commission meeting (notwithstanding the extended outage for the HDC replacement).

However, while the increase in the number of rockets processed is indicative of progress in UMCDF's ability to operate on a sustained basis, processing a significant number of rockets on any given day is not the goal at this point. The goal is to make progress toward completion of the successful agent trial burns. As noted in the next section, recent progress has been made in this area.

Agent Trial Burns

As of April 3, UMCDF had successfully completed its "75% runs" on the DFS and the Liquid Incinerator #1 (LIC1), a significant milestone toward preparations for the agent trial burns on the two incinerators. On two separate days, the site is required to complete eight-hour continuous runs of processing (rockets in the DFS, GB agent in the LIC1) at 75% of the rates they intend to feed during the agent trial burns. The 75% runs are conducted under Phase I conditions, which are a narrower range of operating set points than the Phase II conditions that will be used during the agent trial burns (and post-trial burn operations).

The next milestone during shakedown is to complete eight-hour continuous runs of processing on two consecutive days at 90% of the rates the facility intends to feed during the agent trial burns, used Phase II conditions.

UMCDF's present plans for conducting trial burns in 2005 are as follows:

- TSCA (Toxic Substances Control Act) trial burn to demonstrate destruction of PCBs – late April.
- Deactivation furnace system GB agent trial burn for drained rockets – late May.
- Liquid incinerator #1 GB agent trial burn – late June (may be accelerated to be performed at the time of the DFS agent trial burn due to successful optimization of the LIC1 during the shakedown period).
- DFS GB agent trial burn for gelled rockets – mid August.
- Metal parts furnace GB agent trial burn – late September.
- Liquid incinerator #2 GB agent trial burn – October.

Follow-up on Safety Stand-downs

After resumption of agent operations in December (following the safety stand-down resulting from the breaching of the chemical agent boundary in the filter vestibule for the heating and ventilation system carbon filters), there have been no recurrences of such worker failures.

In follow-up to the immediate actions implemented by UMCDF, the facility continues to implement additional corrective measures and provide monthly progress reports to the Department. As a part of the ongoing actions, in February a team from Washington Group International conducted an assessment of the Umatilla project. This "Tiger Team" consisted of Washington Demilitarization Company's Director of Operations, a corporate office safety specialist, and a corporate office environmental specialist; the Plant Manager and Deputy Maintenance Manager from the Anniston Chemical Agent Disposal Facility; and a maintenance specialist from the Blue Grass Chemical Agent Destruction Pilot Plant. The Tiger Team identified a number of issues related to the management and leadership structure of UMCDF that must be addressed for the facility to "achieve its full potential." The Tiger Team submitted a report to UMCDF with recommendations for better planning of the shakedown schedule; filling vacancies in critical project positions; implementation of integrated processes for work control and corrective action reporting; and development of plans for improving the environmental compliance culture and the safety mindset of the workforce. UMCDF will be providing information to the Department regarding the specific actions they will be implementing in response to the Tiger Team recommendations.

Fire in Explosive Containment Room B

Shortly after 5 p.m. on April 7, a section of a GB rocket ignited at the shear station of the rocket processing line in Explosive Containment Room B (ECR-B). The rocket shear machine was making the fifth of seven cuts on the rocket when an ignition occurred as the shear blade cut through the rocket motor section (which contains rocket propellant). The fire involved the sheared rocket pieces lying on the upper slide gate to the Deactivation Furnace System and the remaining rocket motor section at the shear machine. The fire dampers closed, containing the fire within the ECR-B. No GB agent migrated outside of engineering controls, no injuries occurred, and damage to equipment in the ECR-B appears to have been relatively minor.

A root cause analysis was performed, based upon:

- Inspections inside the ECR-B, looking for an ignition source (none was identified).
- Evaluation of trend data from the rocket handling system.
- Extensive visual reviews of the videotape of the event.
- A review of similar incidents that resulted in a fire in an ECR during rocket processing at other chemical demilitarization facilities. (The Anniston Chemical Agent Disposal Facility had a similar occurrence, but was unable to determine an exact cause of the ignition of their rocket.)

No root cause for the ignition was identified. After completing the root cause analysis and implementing a facility recovery plan that included repairs of the minor damage to the mechanical and electrical systems in ECR-B, UMCDF is expected to resume shakedown activities on April 12 or 13.

Campaign Sequence

UMCDF has been evaluating possible changes in the overall campaign sequence of munitions processing at the site. The original plans had contemplated destruction of GB rockets, followed by VX rockets, followed by the remaining GB munitions, followed by the remaining VX munitions, and finally the mustard ton containers.

The revised campaign consists of destruction of all GB munitions (rockets and bulk containers, followed by projectiles) which is expected to be complete by the first quarter of 2007. After implementing all measures necessary to change over the facility for processing a different chemical agent (which will likely take four to six months), UMCDF plans to process all VX munitions (estimated to be completed about mid-year 2008). After performing another agent changeover, the mustard campaign would potentially begin in early 2009 and be completed by the end of the year.

The revised campaign sequence (which is the sequence being followed at the Anniston Chemical Agent Disposal Facility) would reduce the overall time necessary for destruction of the entire stockpile by eliminating two agent changeovers. In addition, the Depot is implementing two measures in order to reduce the risk from extending the storage of the VX rockets by approximately –eight to nine months while they complete the GB campaign. The primary risk from storage of VX rockets comes from seismic disturbances that could result in one or more rockets falling from the stacked pallets inside a storage igloo. Therefore, UMCD is banding the pallets of rockets together and reducing the height of the stacked pallets from six pallets to four to minimize the risk of rockets falling..

Possible Weapons Relocation

On March 4, the Army's Chemical Materials Agency provided its interim briefing to Department of Defense officials regarding its technical assessment of possible relocation of chemical weapons from some of the stockpile storage sites across the U.S. Little public information was provided after that briefing other than a statement that "options being considered . . . to include relocation of some of the stockpile remain a part of the team's charge." The Army's final report is expected to be provided to the Under Secretary of Defense in mid-April.

Umatilla Chemical Depot (UMCD)

GB Ton Containers

Four one-ton containers containing a mixture of GB agent and rinsate from the transfer of GB from various munitions many years ago are stored at the Umatilla Chemical Depot. The mixture of agent and rinsate tends to be somewhat acidic and can deteriorate the integrity of the steel containers over time. One of the four containers recently developed a leak around one of the metal plugs on the end of the container. The plug is, essentially, a large metal bolt that screws into the container. Ultrasonic testing has indicated a significant deterioration of the threads on the plug and some amount of deterioration in the walls of the container itself.

Depot personnel conducted an operation in March to temporarily seal the leak around the plug and relocate the ton container on top of a spill containment pad inside the storage igloo. Stainless steel overpack containers, specially fabricated at Tooele, Utah, have been recently

delivered to UMCD. The four GB ton containers will be put into the bottom portion of the overpacks to provide additional spill containment. If further leaks develop, the ton containers will be sealed inside the overpacks, until they can be transported to UMCD and processed. The Army and WDC are currently developing plans for discussion with the Department regarding how and when they hope to process these GB containers.

Appeal of Hazardous Waste Storage Permit Conditions

UMCD has submitted a Notice of Appeal regarding six permit conditions in its hazardous waste storage permit that was issued on January 31, 2005. Discussions are underway between UMCD and the Department to explore whether one or more of the issues can be resolved prior to requesting a hearing officer from the Hearing Officer Panel to begin formal proceedings.

UMCD has appealed permit conditions related to:

- The Department's right to reopen the permit if Congress or the President makes substantial changes in the Chemical Stockpile Disposal Program or in CSEPP (the Chemical Stockpile Emergency Preparedness Program).
- Compliance with the facility's Standing Operating Procedures (SOPs) and training procedures as requirements for UMCD to satisfy its obligation to "properly operate and maintain all facilities and systems of containment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the Permit Conditions."
- The right of the Department to limit, prohibit, or otherwise restrict storage operations at the UMCD upon receipt of information that indicates non-compliance with the requirement for proper operation and maintenance of the facility, if such action is appropriate to protect public health, welfare, safety, or the environment. (UMCD objects to this provision as long as proper operation and maintenance includes compliance with SOPs and training procedures.)
- The requirement for UMCD to provide certification by an "Oregon registered" professional engineer for newly modified or constructed hazardous waste management units.
- The requirement for registered professional certifications with documentation of construction (as long as Oregon registered professional engineers are required).
- The requirement for proper management and maintenance of closed hazardous waste management units and all other structures (e.g. buildings, parking areas, underground structures, fences, etc.), if base closure occurs, with consideration for such future use as may be determined by the Umatilla Chemical Depot – Local Reuse Authority.

At this time, no action is required by the Commission. We will keep you apprised of further developments.

Other Demilitarization Facilities

Aberdeen Chemical Agent Disposal Facility (ABCDF), Maryland

On March 11, ABCDF completed destruction of all mustard agent that had been contained in 1,800 bulk storage containers at Aberdeen Proving Ground for more than 60 years. The Army began draining the steel containers and neutralizing the drained mustard agent in April 2003. Work continues on rinsing out residual agent and solids from the bulk containers, cutting the containers in half, and decontaminating the containers with a high pressure spray. The rinsate is

neutralized and the hydrolysate produced from the neutralization process is transported by truck to a wastewater treatment facility operated by DuPont in Deepwater, New Jersey.

Anniston Chemical Agent Disposal Facility (ANCDF), Alabama

In March, ANCDF completed the agent trial burn on its metal parts furnace, using GB-filled 8-inch projectiles. Disposal operations began at ANCDF on August 9, 2003 and the facility has completed the destruction of its 42,762 GB rockets and warheads. ANCDF expects to complete its destruction of 8-inch GB projectiles in April and will reconfigure their equipment for destruction of the facility's 155-mm GB projectiles.

Blue Grass Chemical Agent Destruction Pilot Plant (BGCAPP), Kentucky

Although future plans remain uncertain regarding the stockpile in Kentucky, \$30 million in funding was released by the Pentagon in March for activities at BGCAPP.

Newport Chemical Agent Disposal Facility (NECDF), Indiana

The final disposition is uncertain for the hydrolysate that will be produced from the neutralization of the VX nerve agent in bulk storage containers at NECDF, but plans are proceeding for a Fall 2005 start of operations. The Army has given its required formal notice to Congress of its intent to begin VX destruction at NECDF.

The Centers for Disease Control and Prevention (CDC) has just issued its report "Review of the US Army Proposal for Offsite Treatment and Disposal of Caustic VX Hydrolysate from the Newport Chemical Agent Disposal Facility." Regarding transportation of the hydrolysate, the report concludes that the plan for moving the hydrolysate from NECDF to the DuPont wastewater treatment facility in New Jersey "meets DOT regulations and precautions in the plan are adequate to protect the public and personnel." However, the report also concludes that trace levels of VX and a VX degradation product with nerve agent properties may still be present in the hydrolysate following neutralization of the VX at NECDF.

Furthermore, the CDC report recommends that only part of the stockpile at NECDF should be processed until further tests are done to demonstrate the effectiveness of the treatment process for a portion of the stockpile containing a particular stabilizer (a chemical added to prevent the degradation of the VX during storage). Also, the CDC does not recommend proceeding with the treatment and disposal of the hydrolysate at DuPont until deficiencies identified by EPA regarding the ecological risk assessment for discharges of treated hydrolysate from DuPont's wastewater treatment plant into the Delaware River are resolved.

The resultant hydrolysate will be temporarily stored in containers onsite at NECDF until its final treatment and disposal is determined.

Pine Bluff Chemical Agent Disposal Facility (PBCDF), Arkansas

PBCDF began chemical agent operations on March 29 by processing two GB agent-filled rockets. PBCDF stores 3,850 tons of chemical agents. The facility's inventory includes GB rockets, VX rockets, VX land mines, and mustard bulk containers.

Pueblo Chemical Agent Disposal Facility (PUCDF), Colorado

Although future plans are uncertain for destruction of the stockpile of chemical weapons containing mustard agent at PUCDF, \$40 million in funding was released by the Pentagon in March for initial site grading and limited construction.

Tooele Chemical Agent Disposal Facility (TOCDF), Utah

In March 2005, TOCDF achieved a major milestone: destruction of more than one million chemical weapons. Chemical agent operations began at TOCDF in 1996 with destruction of GB rockets. The VX agent campaign began in March 2003 and the facility is currently processing VX land mines.

Mustard destruction operations are scheduled to begin in early 2006. The facility is still evaluating additional measures that will be necessary to safely process a portion of the mustard agent inventory that contains elevated levels of mercury.

Because of the significant amount of mustard agent at Umatilla (4,679,040 lbs.), the Department has been closely following the issue of mercury contamination in mustard since 2002. At the next Commission meeting on June 23 – 24, the Department will include additional information in its Umatilla update regarding the Army's plan for addressing mercury in mustard agent at TOCDF and how UMCDF intends to determine the scope of the issue at Umatilla and develop a workable approach to processing the 2,365 one-ton containers of mustard agent.

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 31, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item G, Informational Item: Update on Agency Toxics Reduction Strategy
April 22, 2005 EQC Meeting

Purpose of Item The purpose of this item is to update the Environmental Quality Commission (Commission) on the status of the Department of Environmental Quality (Department) Toxics Reduction Strategy, with focus on four pilot projects agreed upon with EPA in the 2004 Performance Partnership Agreement (PPA).

Background The Department has identified "Protecting Human Health and the Environment from Toxics" as a Strategic Direction. Toxics enter the environment through multiple pathways, pose potential risks to humans and the environment at very low concentrations, and readily move between air, water and land. Some types of toxics accumulate in sediments and fish tissue, while others remain in water, land or air at concentrations that represent a threat to human health or the environment.

On December 5, 2003, the Department presented to the Commission a Toxics Reduction Strategy framework, modeled after the Mercury Reduction Strategy presented to the Commission in December 2002. The goal of the Strategy is to develop and implement a coordinated cross-program approach to ensure the Department addresses the most important toxics problems in the most effective way, consistent with our Strategic Priorities.

Because of the number of toxics issues in the state, the Commission urged the Department to seek approaches that address multiple compounds simultaneously. State and federal rules are typically structured to address compounds individually, so innovative approaches are needed to address multiple contaminants simultaneously. Because toxics move readily from media to media, the Commission stressed the need for the Department to adopt a holistic, cross-media approach to resolve environmental problems.

In 2004, the Department took steps to integrate overall toxics policy planning into day-to-day work. Key actions to improve coordination include:

- 1) execution of the 2004 Performance Partnership Agreement with EPA, incorporating specific cross-program toxics objectives;
- 2) initiation of four toxics reduction pilot projects;
- 3) compilation of toxics data analyzed by the laboratory;
- 4) establishment of an Agency Toxics Coordinator position in the Lab Division;
- 5) formation of a geographically-focused, cross-program section in Northwest region to address Lower Willamette issues; and

In addition, the Commission adopted new water quality standards for toxics in May, 2004.

Because few, if any, funds are available to begin new toxics initiatives, the goal is to work smarter by prioritizing toxics work across programs. In 2004, the Department expanded consideration of toxics beyond bioaccumulative compounds to prioritize and reduce impacts from currently used and emerging compounds as well.

2004 Performance Partnership Agreement Pilot Projects

Collaboration on toxics among the Department's programs led to negotiations with EPA on an innovative cross-program emphasis for the 2004 PPA. In addition to traditional program commitments, EPA and the Department agreed to focus available resources on advancing the Toxics Reduction Strategy, finalizing laboratory toxics data compilation, and initiation of four key pilot projects designed to encourage on-the-ground environmental improvements.

They are:

Pilot A: Pesticide Reduction Partnerships

In 2000, the Department started a collaborative effort with the Confederated Tribes of Warm Springs, local orchardists and the watershed council in Hood River to see if orchard pesticides could be affecting threatened steelhead runs and water quality. The Department monitored local streams and collected data during pesticide application periods to identify elevated levels and to encourage voluntary changes in management practices to improve water quality. Water quality data collected over the course of the study showed a steadily improving trend in water quality that was likely associated with development and voluntary implementation of these best management practices.

Using Hood River as a model, the Department has begun partnership projects in The Dalles, Milton-Freewater, the Pudding River Basin and the Clackamas River. In each case, we are partnering with local stakeholders to set up and implement local pesticide monitoring plans to determine if agricultural pesticide applications are affecting streams. If pesticides are detected at concentrations of concern for aquatic life, the Department will work with local stakeholders to encourage implementation of best management practices and integrated pest management practices to reduce environmental impacts while protecting crop quality. Ongoing monitoring can then provide a valuable environmental measure to establish when changes in management practices result in improvements in water quality.

EPA has provided valuable technical assistance, introductions to key stakeholders and funding suggestions for partnership opportunities with ongoing and planned integrated pest management projects. These projects are key to reducing pesticide applications by providing alternate effective pest control mechanisms.

The Department has secured funding to begin limited work on these projects, but future funding is uncertain. The Department has submitted a small grant request to begin a project in the Yamhill basin in conjunction with Total Maximum Daily Load (TMDL) development for the insecticide, chlorpyrifos.

If these voluntary partnerships are successful, the Department will have a valuable new tool to protect water quality and avoid the need for some of the current, more regulatory approaches.

Pilot B: Portland Harbor Stormwater Management

The Department shares oversight responsibility for the Portland Harbor Superfund site cleanup with the EPA. The Department's obligation under the interagency Memorandum of Understanding is to control upland sources of contamination to the Willamette River. Based on evaluation of contaminated sediment data near outfalls, the Department has identified stormwater as a source that needs to be controlled to minimize recontamination of the river sediments after cleanup is complete.

This pilot project aims to evaluate options to prevent recontamination of sediments in the Portland Harbor Superfund site from stormwater runoff. There are two key issues in this project: 1) multiple sources and shared stormwater conveyance systems make identification of upland sources difficult; and 2) overlapping regulatory authority between the Superfund (CERCLA) program and water quality

permitting under the Clean Water Act. Both provide significant challenges for effective management of contaminants entrained in stormwater. The Water and Land Quality Programs have agreed to work cooperatively to find innovative policy and regulatory options to address the complex issues facing the project. The City of Portland is providing funding to hire a full time Portland Harbor stormwater coordinator to coordinate Department efforts. The position is expected to be filled in summer 2005.

Pilot C: Improving Coordination between Land Quality and Water Quality Programs on the Management of Hazardous Waste

This pilot project aims to facilitate communication between Water and Land Quality to ensure consistency between data reported to the hazardous waste and water quality permitting, and pretreatment programs. Required reporting of hazardous wastes to the Department includes the volume of treated wastewater released to publicly owned treatment works or under NPDES permits, but does not require quantification of contaminants remaining in the waste stream after treatment. The objective for the project in the 2004 PPA states, *“Improve internal communication between WQ and HW Programs regarding hazardous waste discharged as wastewaters and identify appropriate ways to use this information in WQ regulatory activities.”*

Work is underway at the Department to evaluate consistency between hazardous waste generator reports submitted to Land Quality, and Water Quality pretreatment and wastewater discharge permitting data. Additionally, EPA has agreed to assist in the identification of pollutant constituents of concern, by industry sector, and to share data, as available, on national studies of wastewater effluent from hazardous waste generators.

Pilot D: Cleaning Up Abandoned Mines

This long term pilot project aims to use a cross-program, multimedia approach to clean up an abandoned mine site. The mine selected is the Black Butte mercury mine. The objective for the project in the 2004 PPA states, *“The long term goal of this effort is to reduce the amount of toxic materials leaving an abandoned mine site in order to prevent environmental impacts.”* Funding for this pilot project, and for abandoned mine site cleanup work in general, is extremely limited.

The Department received \$60,000 from EPA for assistance preparing a sampling and analytical work plan to support the Department’s removal assessment; the work plan is expected to be complete this year. However, no funds have been identified to proceed with the removal

action. Using orphan bond funds is not an option, as a bond sale is not included in Governor's recommended budget for the 2005/2007 biennium. The Department and the Governor's Office are working with Oregon's Congressional delegation and others to identify potential alternative funding sources for implementing on-the-ground removal and cleanup actions at Black Butte.

Department Toxics Data Report

Since 1979, the Department has collected many samples across the state for toxic chemical analysis. The Laboratory has analyzed these samples for a variety of toxics, especially metals and "legacy" toxic chemicals such as DDT. The data have been consolidated into a chemical database called LASAR. Because samples were collected to address specific project goals, the database does not provide a complete picture of toxic chemical distribution or risk. However, the available data can be used as one tool now for evaluating toxic chemical distribution and for setting work priorities. Examples of prioritizing work based on laboratory data include 303(d) listings, TMDL development, evaluating statewide risks from nitrates in drinking water, and effects of perchloroethane on metro area air quality.

We have little or no data for many of the toxic chemicals that are being released to the environment now. Lack of state or federal standards for these compounds and a lack of resources to conduct monitoring limits our ability to determine where these compounds may present a risk to human health and the environment. Therefore, strategic identification of problems and solutions must consider land use, sources, and potential risk for the best use of resources.

Agency Toxics Coordinator

In order to facilitate cross-program coordination for implementation of the Toxics Reduction Strategy, the Department established the Agency Toxics Coordinator position in the Laboratory Division. In addition to providing leadership for the pilot projects, the Coordinator is responsible for evaluating existing agency toxics data, developing and seeking funding for a strategic toxics monitoring plan, and finalizing a prioritized work plan to focus agency efforts on toxics reductions. The position also provides scientific and technical guidance on toxics issues.

Lower Willamette Section

The Portland Harbor Superfund site is at the forefront of many key cross-program issues that the Department faces, including management of contaminated sediments, stormwater and nonpoint sources. To better inform both policy making and on-the-ground decisions, a

geographically-focused Lower Willamette section was formed in Northwest Region. The section joins cross-program headquarters policy staff with cleanup staff actively involved in the Superfund investigation.

Revised Water Quality Standards for Toxics

The Commission adopted revised standards for toxics to protect water quality in May 2004. These standards reflect the most recent national recommendations for aquatic life and human health protection. The Department submitted the standards to EPA, and is still awaiting approval. The rules had a delayed effective date, and many of the criteria went into effect on February 15, 2005. The Department is currently finalizing an internal guidance document on how and when to calculate permit limits (called the "Reasonable Potential Internal Management Directive") that will assist permit writers in implementing the revised standards.

Key Issues

Key issues in implementing a successful toxics reduction strategy are:

Data gaps. There is little funding available for toxics monitoring, and no state or federal standards for many currently used pesticides and other, non-legacy chemicals that could be posing risks to human health and the environment. These require expensive monitoring and analysis programs, so there is a need to identify and procure new funding.

Active cross-program partnership with EPA. EPA's assistance to move innovative programs forward is crucial. This includes not only financial or staffing resources but also an active partnership in creative policy development to support an integrated approach. This is in contrast to the current pollutant-by-pollutant policy framework.

Pesticide Reduction Partnerships may decrease the need for future regulatory actions. If targets can be met using voluntary measures, we will gain quicker environmental results, through cooperative rather than regulatory controls.

The possibility of partnering with the Oregon Department of Agriculture (ODA) on integrated pest management may provide a more comprehensive approach to reducing environmental and human exposures to currently used pesticides. EPA Region 10 is actively engaged with ODA, Oregon State University and grower groups on key integrated pest management projects designed to reduce pesticide application rates. Cooperative agreements to provide environmental monitoring for these projects could provide valuable environmental measurement data to support evaluation of these innovative projects.

Next Steps

- Completion of the Department's LASAR data report, June 30, 2005.
- Evaluate existing external toxics data to augment agency knowledge on multi-media toxics distribution (dependent on EPA assistance and funding).
- Advance cross-program work on pilot projects as described in the attached PPA Project Plans.
- Determine prioritized toxics monitoring needs based on land use and known sources. Seek funding alternatives to pursue a strategic toxics monitoring plan.
- Provide data tools to regions and programs to set priorities on toxics.
- Evaluate and prioritize agency toxics work across programs, with stakeholder input.
- Complete a prioritized work plan to guide the Department's efforts to address toxics by June 30, 2006.

EQC

None requested at this time.

Involvement

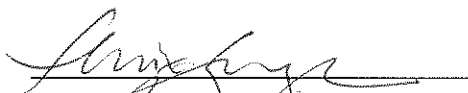
Attachments

Attachment A:

Pilot project plans for the Performance Partnership discussions

Approved:

Section:



Division:



Report Prepared By: Fenix Grange

Phone: 503-229-5983 ext. 260

**DEQ Project Plans
2004 Performance Partnership Agreement**

Pilot Project: Pesticide Reduction Partnerships**Date:** March 1, 2005

Project Summary: This pilot project aims to form collaborative, local partnerships to improve water quality in small, agricultural basins through a combination of surface water monitoring for pesticides and outreach to encourage voluntary implementation of best management practices (BMPs) and integrated pest management (IPM). The objective listed in the 2004 Performance Partnership Agreement states, "*Get orchardists to voluntarily change management practices to reduce water pollution*". The concept has since been expanded to encompass other agricultural land uses.

Project Sponsor: Mary Abrams
Laboratory Administrator

Project Manager: Fenix Grange
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Project Milestones:***To Date:***

- Use of \$65,000 in 319 funds approved by EPA to begin outreach and pilot sampling in 3 basins in 2005.
- Pudding River 319 grant submitted by community partners for 2 year project to complete baseline sampling and identify priorities for BMP development
- \$90,000 319 grant approved for 2 year Pudding River Pesticide Reduction Partnership
- Partnership established in Walla Walla basin and decision made to begin pesticide monitoring in March, 2005
- 104(b) application submitted for 1 year baseline pesticide sampling effort in 2006 in conjunction with Yamhill chlorpyrifos TMDL

March 31, 2005:

- Field sampling commences in Walla Walla basin
- Completion of pilot sampling plan for Clackamas basin, with participation and concurrence from local partners.

June 30, 2005:

- Outreach to stakeholders in Bear Creek and Yamhill basins.
- Partner with EPA on ongoing EPA projects in Oregon, as appropriate.
- In partnership with EPA, develop funding strategy to continue PRP work.

December 31, 2005:

- Submission of additional 319 proposals, as appropriate.
- Completion of data analysis for 2005 funded sampling.

June 30, 2006:

- Report on progress and success of PRP pilot project, with path forward for ongoing work.

Expected Outcomes:

- Establishment of 2-3 partnerships with local agricultural communities to initiate pesticide monitoring during pesticide application periods.
- Baseline pesticide monitoring data to evaluate whether currently used agricultural pesticides are entering local surface waters during pesticide application periods.

Potential Measures:

- Environmental pesticide monitoring data to establish occurrence and concentration of pesticides in surface waters concurrent with pesticide application periods.
- Changes in frequency and concentration of pesticide detections which may be associated with changes in management practices.
- Self-reported data from agricultural partners on BMP/IPM implementation

Project Needs from EPA:

- Coordination, technical support and community introductions from the Office of Pesticide Programs to coordinate DEQ efforts with EPA-led IPM projects in Oregon
- Assistance with EPA funding and identification of other funding sources to initiate partnerships and to fund on-going monitoring, BMP and IPM projects

DEQ Project Plan 2004 Performance Partnership Agreement

Pilot Project: **Portland Harbor Stormwater Management**

Date: March 1, 2005

Project Summary: This pilot project aims to evaluate options to prevent recontamination of sediments in the Portland Harbor Superfund site from stormwater runoff. Shared stormwater conveyance systems and overlapping regulatory authorities between the Superfund (CERCLA) program and the Clean Water Act provide significant challenges for effective management of contaminants entrained in stormwater. The objective for the project in the 2004 Performance Partnership Agreement states, *"Evaluate potential methods for preventing toxics in urban stormwater from reaching the cleanup site."*

Project Sponsor: Mary Abrams
Laboratory Administrator

Project Manager: Fenix Grange
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Milestones:

To Date:

- First Portland Harbor interagency stormwater work session held Fall, 2004 to identify key questions/data gaps needed to evaluate stormwater pathway
- WQ/CU agreement to form stormwater working group - mgmt & technical staff resources to identify and evaluate options
- Initial recruitment for Portland Harbor stormwater coordinator position was unsuccessful
- City of Portland hired consultant to proceed on technical work needed to complete DEQ stormwater management performance measures
- Submitted revised Portland Harbor Source Strategy, which includes stormwater evaluation to EPA CERCLA team for review 3/2005

March 31, 2005:

- Determine path forward for recruitment of stormwater coordinator to staff this project

June 30, 2005:

- Complete Portland Harbor Joint Source Control Strategy, which addresses upland property owners' stormwater management responsibilities
- Hire Stormwater Coordinator

December 31, 2005:

- Convene Stormwater working group to address regulatory and policy options that address key concerns raised in technical study.

June 30, 2006:

- Report on progress and success of Portland Harbor stormwater management pilot project, with path forward for ongoing work.

Expected Outcomes:

- Evaluation of stormwater permit effectiveness for protection of sediment quality in Portland Harbor
- Identification of appropriate stormwater BMPs for Portland Harbor contaminants of interest (COIs)
- Identification of appropriate quantitative surrogates for COI concentrations (TSS, turbidity)
- Evaluation of BMP effectiveness
- Identification of policy and/or regulatory options

Potential Measures:

- Yet to be determined.

Project Needs from EPA:

- Coordination and technical support from the WQ and Superfund programs to coordinate DEQ source control efforts in Portland Harbor
- EPA partnership with the DEQ team to identify priority stormwater COIs and evaluate regulatory options
- Assistance with data evaluation to identify appropriate permit surrogates for COIs
- Assistance establishing performance measures

DEQ Project Plan 2004 Performance Partnership Agreement

Pilot Project: Improving Coordination between Land Quality and Water Quality Programs on the Management of Hazardous Waste

Date: March 1, 2005

Project Summary: This pilot project aims to facilitate coordination between WQ and HW programs to ensure consistency between data reported to the hazardous waste and water quality permitting, and pretreatment programs. Required reporting of hazardous wastes to DEQ include volumes of treated wastewater released to publicly owned treatment works (POTWs) or under NPDES permits, but does not require quantification of hazardous wastes remaining in the waste stream after treatment. The objective for the project in the 2004 Performance Partnership Agreement states, *"Improve internal communication between WQ and HW Programs regarding hazardous waste discharged as wastewaters and identify appropriate ways to use this information in WQ regulatory activities."*

Project Sponsor: Mary Abrams
Laboratory Administrator

Project Manager: Fenix Grange
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Milestones:

To Date:

- Provided Hazardous Waste Generator (HWG) reports to POTWs
- Received POTW reports comparing their data to the HWG reports
- Determined that EPA report on HWG wastewater stream evaluation not yet available

April 30, 2005:

- Evaluate POTW reports to identify consistency between HWG reporting to DEQ WQ permitting and POTWs
- Hold cross-program discussion to identify next steps, brainstorm inter-program information sharing methods.

June 30, 2005:

- Receive and circulate EPA reports on HWG wastewater evaluations
- Hold meeting(s) of WQ and HW staff to identify remaining issues of concern
- Identify inter-program reporting needs

December 31, 2005:

- Implement inter-program reporting program, as needed.
- Include HW data reporting in triennial audits of POTWs by pre-treatment coordinator.

June 30, 2006:

- Report on progress and success of HW-WQ wastewater pilot project, with path forward for ongoing work.

Expected Outcomes:

- Evaluation of consistency between hazardous waste generator reports to DEQ HW and WQ permitting sections and to publicly owned treatment works.
- Review of EPA experience nationwide to identify constituents of concern, if any.
- If needed, clear problem statement identifying potential risks to water quality in Oregon from wastewater discharges from hazardous waste generators
- Agreement between WQ and HW on appropriate cross-program information sharing and reporting needs
- If needed, cross-program reporting mechanism put in place

Potential Measures:

- Yet to be determined.

Project Needs from EPA:

- Provide OSW report on the wastewater treatment unit exemption describing effluent sampling findings.
- Provide information on RCRA investigation of discharged wastewater during multimedia inspections.
- Assistance identifying constituents of concern in HW wastewater streams by sector
- Assistance establishing performance measures
- Identify grant opportunities to increase available resources or fund follow up activities, as needed.

DEQ Project Plan 2004 Performance Partnership Agreement

Pilot Project: Cleaning Up Abandoned Mines

Date: March 1, 2005

Project Summary: This pilot project aims to use a cross-program, multimedia approach to cleaning up an abandoned mine site. The objective for the project in the 2004 Performance Partnership Agreement states, "*The long term goal of this effort is to reduce the amount of toxic materials leaving an abandoned mine site in order to prevent environmental impacts.*" Funding for this pilot project, and for abandoned mine site cleanup work in general, is limited.

Project Sponsors: Al Kiphut
Land Quality Administrator

Project Manager: Jeff Christensen
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Milestones:

To Date:

- Mine site selected - Black Butte mercury mine
- Mine effects on Cottage Grove reservoir (Hg in fish tissue) being addressed in TMDL
- \$60,000 in EPA contractor assistance funding awarded by EPA for assistance in preparing a sampling and analytical work to support DEQ's removal assessment - we expect this work to be completed this year
- University of Nevada (EPA Star grant funding) to monitor and evaluate fate and transport of mercury at Black Butte, specifically air emissions and plant uptake
- Orphan bond sale option was not included in Governor's recommended budget - state funds not available this biennium for abandoned mines work
- Oregon DEQ and the Governor's Office are working with Oregon's Congressional delegation and others to identify potential alternative funding sources for implementing on-the-ground removal and cleanup actions at Black Butte.

March 31, 2005:

- No milestones planned

June 30, 2005:

- Updated outline of abandoned mines assessment prepared for May 26, EPA-DEQ Cross Program meeting.

December 31, 2005:

- TBD, based on funding

June 30, 2006:

- TBD, based on funding.

Expected Outcomes:

- Completion of Black Butte mine removal assessment.
- Other outcomes dependent on funding

Potential Measures:


- Yet to be determined.

Project Needs from EPA:

- Identify federal funding/grant opportunities for clean up activities at Black Butte and Formosa mines
- Identify federal funding for other mine assessments and cleanups

State of Oregon
Department of Environmental Quality

Memorandum

Date: March 31, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director 
Subject: Agenda Item H, Informational Item: Status of the Board of Forestry Riparian Rulemaking
April 22, 2005 EQC Meeting

Purpose of Item

The purpose of this informational item is to present a status report on the rulemaking and other activities of the Board of Forestry (the Board) and Oregon Department of Forestry (ODF) under the Oregon Forest Practices Act (FPA) in response to the *Forest Practices Act Sufficiency Analysis* (Sufficiency Analysis) completed in October 2002. The Sufficiency Analysis was a collaborative, three-year joint effort by the Department of Environmental Quality (DEQ) and ODF to determine the effectiveness of the FPA in protecting water quality.

Under state statutes, the Board has been given the responsibility for regulating forest practices. Under ORS 527.770, forest operations conducted in accordance with best management practices (BMPs) "shall not be considered in violation of any water quality standards." The Environmental Quality Commission (EQC) has the primary responsibility for complying with the mandates of the federal Clean Water Act (CWA), including setting water quality standards. There is inherent regulatory overlap between EQC and the Board due to the fact that certain forest operations can affect water quality. The Board is required by statute to consult with EQC in adoption of rules to address nonpoint source discharges of pollutants resulting from forest operations. EQC may initiate procedures to petition the Board to review the FPA rules and BMPs under ORS 527.765 at any point if EQC determines that the rules and practices are inadequate to protect water quality standards.

This item builds on EQC's forest practices discussions on February 6 and July 7, 2004, the Board's ongoing meetings since July 2003 regarding water protection rule concepts, and the joint meeting between the EQC and Board on October 21, 2004, in Tillamook.

Background

Pursuant to a 1998 Memorandum of Agreement between ODF and DEQ, the Sufficiency Analysis identified a series of recommendations (see Attachment A,

Executive Summary of Sufficiency Analysis: A Statewide Evaluation of Forest Practices Act Effectiveness in Protecting Water Quality) to highlight general areas where current forest practices are either insufficient or could be improved to better meet the goals and objectives of the Forest Practices Act and in turn provide added assurance of meeting water quality standards. The Board unanimously accepted the report, and encouraged ODF to incorporate its recommendations through appropriate means.

Prior to the Sufficiency Analysis, the Independent Multidisciplinary Science Team (IMST) conducted an evaluation of the riparian protections of the FPA as part of the Oregon Plan for Salmon and Watersheds. The IMST provided its recommendations to two stakeholder groups evaluating policy changes (i.e., the Forest Practices Advisory Committee, or FPAC, and the Eastside Riparian Functions Advisory Committee). These advisory groups arrived at many similar conclusions reached subsequently by the Sufficiency Analysis.

Since July 2003, the Board has been considering possible riparian rule revisions and voluntary measures that take into account recommendations from the Sufficiency Analysis, the advisory committees and the IMST, as well as additional recommendations from Oregon Department of Fish and Wildlife (ODFW), DEQ, and other stakeholders.

The Board is considering the recommendations in light of relevant social, economic, and environmental aspects of the FPA. ORS 527.714 limits adoption of new rules which would implement resource protection objectives that require new or increased standards for forest practices. The statute requires, for example:

- scientific documentation that show degradation of resources is likely if forest practices continue to be conducted under existing regulations.
- an alternatives analysis that considers non-regulatory approaches. The least burdensome alternative must be chosen.
- the benefits to the resource achieved by the rule to be proportional to the degradation caused by forest practices.

ODF has recommended the use of voluntary measures when adequate scientific documentation is not available to show degradation of resources. Attachment B (Summary Table of the Sufficiency Analysis recommendations and corresponding FPA rule concepts) outlines the status of recommendations and actions to date.

Attachment C, Staff Report for Environmental Quality Commission and Board of Forestry Joint Discussion on Water Quality and Forest Practices, dated September 24, 2004, provides background on the Board's riparian rulemaking process, as well as a summary of key issues identified by DEQ and ODF. The key issues were:

1. Proposed riparian rules as a package to address Sufficiency Analysis recommendations;
2. TMDL and FPA link;
3. Small Type N (non fish bearing) stream protection.

The joint staff report raised two questions for the Commission and the Board to discuss:

1. Is the current riparian rule package still necessary to adequately address issues raised in the Sufficiency Analysis, and to provide reasonable assurance that the improved BMPs implemented through the FPA and voluntary measures will result in attainment of Oregon's water quality standards?
2. Does application of the current water temperature standards adequately consider how key natural processes affect beneficial uses in the forest environment?

In October 2004, the EQC and the Board toured private forestlands in the Tillamook area to discuss stream protection issues, and then hosted a joint public meeting. The meeting consisted of presentations regarding the relationship between Board and EQC authorities; the general history of the interactions between the FPA and water quality standards; decisions that have been made to date regarding the current rulemaking; and issues of science, law and policy.

Following the presentations and public comment, the EQC and the Board held a joint discussion. For a summary of the public testimony and joint discussion, see Attachment D, October 2004 Oregon Environmental Quality Commission Meeting Minutes. The Board and the Commission encouraged DEQ and ODF to continue to cooperate and collaborate in order to find equitable solutions to the issues raised.

At the time of the Joint Meeting, the ODF proposed the following actions to take place before the adoption of the riparian rules planned for 2005:

1. ODF to present its findings for the ORS 527.714 analysis to the Board and request approval to initiate formal rulemaking for the rule concepts the Board has approved to date.
2. ODF to present to the Board a recommendation for clarifying the policy statement that outlines the goals of the Forest Practices Act water protection rules.
3. ODF may also present draft language to address riparian protection on small type N streams for western Oregon and may request to initiate ORS 527.714 analysis as well as formal rulemaking for this purpose.

Board's Work Plans to Address Issues

After the joint meeting, the Board adopted a more systematic way of setting priorities and planning and overseeing ODF's work in support of Board priorities. The Board has done this to determine where to best focus their time, and to ensure implementation of the visions described in the Forestry Program for Oregon (FPFO) stays on track. The Board has identified seven priority objectives to shape their 2005 agenda. Each of the priorities relate to strategies or other elements of the FPFO. See Attachment E, letter dated February 18, 2005 to Individuals and Groups Interested in the Work of the Oregon Board of Forestry from Stephen D. Hobbs, Chair, Oregon Board of Forestry, regarding the Board of Forestry's decision systems and priority objectives.

The issues with the riparian rulemaking identified by DEQ and ODF fall under the Regulatory Regime priority area, which is one of the seven priorities identified by the Board. This priority addresses the approach expressed in the FPFO of using incentives and non-regulatory means when possible toward achieving public benefits on private land. This priority includes existing rulemaking efforts, recognizing the role of regulations in achieving goals of the FPFO. Other regulatory processes and analysis of the effects of Measure 37 are also included in the work plan.

The work plan for the Regulatory Regime priority area was presented to the Board at its March 9, 2005 meeting. ODF explained how the passage of the Ballot Measure 37 has affected the Board's rulemaking process, and proposed a work plan for the Board to address various issues within the Regulatory Regime priority area, including the riparian package, TMDL link to FPA, and small type N stream protection. Attachment F, Draft Regulatory Regime Work Plan, describes how ODF proposes to address issues related to regulations.

Ballot Measure 37

Proposed riparian rule revisions will be contingent upon the outcome of legal issues associated with Ballot Measure 37. The measure states that the owner of private real property is entitled to receive just compensation when a land use law is enacted after the owner or a family member becomes the owner of the property, and the law restricts the use of the property in the manner that reduces fair market value. The measure includes forest practices statutes and administrative rules as "land use regulation." ODF has received Ballot Measure 37 claims against FPA rules, and expects that any substantial progress on the regulatory component of this work plan will be delayed until there is more clarification on the impacts of the measure.

Ballot Measure 37 exempt laws necessary to protect public health and safety, such as fire and building codes, health and sanitation regulations, solid or

hazardous waste regulations, and pollution control regulations. There is also an exemption to the extent the land use regulation is required to comply with federal law. Ian Whitlock, Senior Assistant to the Attorney General, reported to the Board that the Department of Justice (DOJ) will analyze the measure and will develop guidance about the application of those exemptions in the coming weeks.

Voluntary Measures

ODF developed a work plan for voluntary implementation of riparian protection concepts approved by the Board. This process would include the use of a collaborative process consistent with the Oregon Plan for Salmon and Watersheds. Outcomes from this process would be brought to the Board to make a determination on final action.

Riparian Rule package

Under the new work plan, ODF staff will implement a work plan for the rule development process. As part of the process, the Board will work through riparian rule concepts and come to a decision on implementation. For the set of rule concepts with conditional approval for rule development, ODF has worked on the economic and social analysis as required by ORS 527.714. ODF has not, however, presented its findings to the Board since findings of the analysis as well as the rule concepts themselves may need to be revisited depending on information pending from the DOJ on the potential effects of Measure 37.

TMDL/FPA Link

ODF staff is proposing to develop an issue paper in collaboration with DEQ and DOJ about the pros and cons of creating a link between the FPA and TMDL load allocations by fall 2005. The issue paper will include the Department's recommendation for taking action on this concept.

Small Type N Stream Protection

ODF is proposing to convene a stakeholder group (including a representative from DEQ) to explore approaches to addressing riparian protection along small Type N streams in western Oregon. The stakeholder group will bring its recommendations to the Board for a determination on final action.

Board members expressed that the Regulatory Regime Work Plan was a high priority, and encouraged ODF to establish timelines and move forward in a timely manner. The Board approved the draft Regulatory Regime Work Plan with the understanding that ODF will incorporate the Board's comments into the final Work Plan. The final Plan is scheduled to be reviewed and approved at the next Board meeting on April 29, 2005.

Next Steps The Board's Issue Work Plans identify a number of actions to be taken before final adoption of riparian rules by the Board. Some of the key actions include:

1. DOJ will prepare an advisory on the application of health and safety as well as federal law exemptions from Ballot Measure 37.
2. The Board plans to approve the final Regulatory Regime Work Plan at April 2005 Board meeting after corrections are made to the draft document.
3. ODF plans to hold ORS 527.714 and ORS 527.765 Maximum Extent Practicable¹ Decisions Workshops in the coming months.

DEQ will continue to participate in ODF's rulemaking process and provide appropriate support to address issues identified in the Sufficiency Analysis.

**EQC
Involvement**

The Board of Forestry is required by statute to consult with the Environmental Quality Commission in adoption of practices and other rules to address nonpoint source discharges of pollutants resulting from forest operations on forestlands. DEQ staff will keep the Commission informed on the progress of BOF rulemaking activities throughout the year. The Commission may initiate procedures to petition the Board of Forestry to review the Forest Practices Act rules and best management practices under ORS 527.765 at any point if the Commission feels that the rules and practices are inadequate to protect water quality standards. Similarly, upon request of the BOF, the Commission shall review any water quality standard that affects forest operations on forest lands under ORS 468B.105.

DEQ will continue to work with ODF to provide the Commission an adequate update of the rulemaking process and the opportunity to present any questions or issues.

1. The FPA (ORS 527.765) requires the Board to adopt rules that provide control of nonpoint source pollution to the 'maximum extent practicable (MEP).' The requirement was intended to have the FPA language conform to the requirements in Section 319 of the CWA, thus the phrase should be interpreted in the same manner as it is in CWA. Unfortunately, the CWA does not define MEP, and there are likely several different opinions of what this means. In general, "practicable" means capable of being done, and MEP likely means implementing all that is feasible, economically and technically, from an industrial perspective.

Attachments

- A. Executive Summary of Sufficiency Analysis: A Statewide Evaluation of Forest Practices Act Effectiveness in Protecting Water Quality
- B. Summary table of Sufficiency Analysis recommendations and corresponding FPA rule concepts
- C. Staff Report for Environmental Quality Commission and Board of Forestry Joint Discussion on Water Quality and Forest Practices dated September 24, 2004
- D. Minutes from the Joint Meeting of the Environmental Quality Commission and Board of Forestry in October, 2004
- E. The Board of Forestry's Decision System & Priority Objectives -- Message from the Board Chair Dr. Stephen D. Hobbs
- F. Regulatory Regime Work Plan: Measure 37, ORS 527.714 Analysis, 2003 HB 3264, Water Protection Rules -- Regulatory and Voluntary, 2003 HB 3616, Special Resources (March 9, 2005 Board Meeting Agenda Item 9)

Approved:

Section: _____

Division: _____

Report Prepared By: Koto Kishida
Phone: (503) 229-6381

Attachments

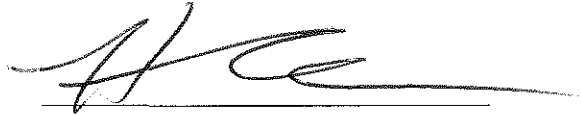
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Approved:

Section:



Division:



Report Prepared By: Koto Kishida
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**EXECUTIVE SUMMARY of Sufficiency Analysis: A Statewide
Evaluation of Forest Practices Act
Effectiveness in Protecting Water Quality**

Background

In recent years, increased attention has been given to the development of Total Maximum Daily Loads (TMDLs) and the listing of 303(d) water quality limited streams¹ in the state of Oregon under the Clean Water Act. This has presented new opportunities for the Oregon Department of Forestry (ODF) and the Department of Environmental Quality (DEQ) to move forward together to address water quality issues on non-federal forestlands. To adequately address these issues, the ODF and DEQ have agreed through an April 1998 Memorandum of Understanding (MOU) to jointly evaluate the sufficiency of the Forest Practices Act (FPA) to protect water quality. The MOU outlines five specific water quality parameters that will be addressed: temperature, sedimentation, turbidity, aquatic habitat modification, and bio-criteria.

The purpose of this sufficiency analysis, as described the MOU (Appendix D) is to determine:

- (a) The adequacy of the FPA pursuant to ORS 527.765 in the achievement and maintenance of water quality standards, with due consideration to regional and local variation in effects;
- (b) If forest practices contribute to identified water quality problems in listed water quality limited streams; and
- (c) If so, to determine whether existing forest practice rules provide sufficient control to assure that water quality standards will be met so that waters can be removed from the 303(d) list.

Consistent with the MOU, water quality parameters not specifically addressed in the sufficiency analysis "are generally not attributable to forest management practices as regulated by the EPA." Given the lack of any significant information on "other" parameters that might be influenced by current practices since the drafting of the MOU, the ODF and DEQ have agreed that an evaluation of parameters beyond those specifically listed in the MOU is not warranted at the time of this evaluation. The intent of the MOU and the focus of this report is on those parameters where it is known that forest practices have in some cases caused documented changes in water quality conditions.

The overall goal of the water protection rules as stated in Oregon Administrative Rules (OAR 629-635-0100 (7)) is to provide resource protection during operations adjacent to and within streams, lakes, wetlands and riparian management areas so that, while continuing to grow and harvest trees, the protection goals for fish, wildlife, and water quality are met.

- (a) The protection goal for water quality (as prescribed in ORS 527.765) is to ensure through the described forest practices that, to the maximum extent practicable, non-point source discharges of pollutants² resulting from forest operations do not impair the achievement and maintenance of the water quality standards.

¹ Water quality limited streams are those waters included on the 303(d) list maintained by the DEQ. These are waterbodies currently identified as not meeting water quality standards (see Appendix E).

² Non-point source discharges are those originating from diffuse sources across the landscape and cannot be traced to a single point or discrete activity.

(b) The protection goal for fish is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-640-0000 (streams), OAR 629-645-0000 (significant wetlands), and OAR 629-650-0000 (lakes) that will maintain water quality and provide aquatic habitat components and functions such as shade, large woody debris, and nutrients.” OAR 629-635-0100 (7)

State policy on water pollution control for state and private forestlands originates from the Environmental Quality Commission (EQC) and applicable administrative statutes:

“To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses.” [ORS 468B.015(2)]

“Implementation of any limitations or controls applying to nonpoint source discharges or pollutants resulting from forest operations are subject to ORS 527.765 and 527.770.” [ORS 468B.110 (2)]

Consistent with these statutes, the FPA is Oregon’s water quality standard compliance mechanism with respect to forest operations on state and private forestlands:

“The State Board of Forestry shall establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state. Such best management practices shall consist of forest practices rules adopted to prevent or reduce pollution of waters of the state. Factors to be considered by the board in establishing best management practices shall include, where applicable, but not be limited to:

- (a) Beneficial uses of waters potentially impacted;
- (b) The effects of past forest practices on beneficial uses of water;
- (c) Appropriate practices employed by other forest managers;
- (d) Technical, economic and institutional feasibility; and
- (e) Natural variations in geomorphology and hydrology.” [ORS 527.765 (1)]

“A forest operator conducting, or in good faith proposing to conduct, operations in accordance with best management practices currently in effect shall not be considered in violation of any water quality standards.” [ORS 527.770]

These Oregon administrative rules are designed to achieve water quality goals consistent with the relevant statutes, ORS 468B.015(2), 468B.110 (2), 527.765, and 527.770 cited above. It is in this regulatory and policy context that applicable water quality standards and the FPA are implemented to address water quality protection for waters of the state.

Most of the parameters addressed in this sufficiency analysis are inter-related, and forest management activities often have the potential to affect more than one parameter at the same

time. For example, habitat can be modified with changes in sedimentation and turbidity, and sedimentation can influence stream temperature by altering channel dimensions and subsurface hydrology, thus affecting the net heat load to the stream. It is logical to take a holistic approach and consider water quality conditions as a result of all the parameters interacting collectively rather than attempting to consider each parameter wholly independent of the others. Accordingly, this report takes a broad approach to examining the sufficiency of the FPA and considers the multiple factors and functions by evaluating water quality standards primarily through the FPA rule objectives.

Given the consistency between the FPA and state water quality statutes and their respective administrative rules, achieving FPA goals, as articulated in the administrative rules, will ensure achieving and maintaining water quality goals and water quality standards to the maximum extent practicable. This sufficiency analysis will therefore consider the adequacy of the rules in achieving the objectives and goals of the FPA. If current practices are meeting FPA objectives and goals, state water quality standards will be met as well. If the ODF and DEQ find FPA objectives and goals are not being met, the BOF will create or modify statewide or regional rules, or design other effective measures to address the water quality impairment.

In analyzing natural resource data and attempting to draw specific cause-and-effect conclusions between human activities and natural resource conditions, the quality and/or quantity of data necessary for a high level of scientific certainty is often not available. This effort at evaluating the sufficiency of the FPA is no exception. Available data pertinent to direct cause-and-effect linkages between the FPA and quantitative water quality conditions is very limited.

There are at least two general points of view regarding such scientific uncertainty. One is to assert that since it cannot be determined with certainty that a set of practices *is* achieving a given water quality standard, a conservative approach should be taken and the rules changed to provide a higher level of protection in case a significant risk does, in fact, exist. Another view is to assert that since it cannot be determined with certainty that a set of practices *is not* achieving a given water quality standard, there is no reason for a change in practices until further monitoring and/or research can prove that a significant risk does, in fact, exist. Both points of view are valid when scientific findings are uncertain, and values and beliefs play a large role in how these points of views utilize limited scientific information.

One task of the ODF and DEQ sufficiency analysis is to present and analyze all of the applicable science and information. Following the completion of this analysis, the Board of Forestry will consider the recommendations in light of the relevant social, economic, and environmental context of the FPA. The goal of this approach is to utilize the recommendations so that outcomes are consistent with both the scientific information and the existing socio-economic framework of the FPA.

Social, Economic, and Environmental Framework

For the report recommendations to be acted upon following its completion, a review of the legal and policy setting, Oregon's forest land base, and forest ecosystem dynamics will need to be considered by the Board of Forestry in reviewing the adequacy of the FPA in meeting water

quality standards “to the maximum extent practicable” as defined by state statute. Appendix A provides this review and describes the overall context in which the FPA operates. There are different environmental, social, and economic implications, depending on the interpretation of “maximum extent practicable,” and these implications should be considered for this evaluation to result in an outcome that does not create unintended negative consequences for resource protection. For example, increased forestry regulations in Washington state, combined with development pressures, are partly responsible for ten-times the area of forestlands being converted to other land uses as compared to Oregon over the last decade. While these increased regulations may have resulted in some increase in resource protection for forestlands at a site-specific level, it may have been at the cost of losing an area of land (400,000 acres) to other uses that may not provide as high a level of resource protection as forestlands. Taking into account the social, economic, and environmental aspects in evaluating FPA-sufficiency early on can help to avoid this type of unintended negative consequence, while also ensuring that statutory obligations are met.

Current Scientific Knowledge

Appendix B is a review and summary of the current scientific findings and monitoring results relevant to specific forest practice issues directly related to achieving water quality goals. Each of the water quality parameters that are the subjects of this report are linked to specific forest practice issues that address those parameters. The forest practice issues reviewed here include stream temperature, large wood, forest roads, landslides, and fish passage. The technical information included in this section of the report is used as the basis of the evaluations and recommendations developed in the remainder of this report, and they are referenced accordingly.

Description of Pollution Control Mechanisms

Appendix C describes the current pollution control mechanisms implemented to meet or exceed current water quality standards. These mechanisms include both the FPA and Oregon Plan voluntary measures. They are organized under the same forest practice issues outlined in Appendix B.

Evaluation

The following conclusions apply to all applicable standards (temperature, sedimentation, turbidity, aquatic habitat modification, and bio-criteria).

Site-Specific Evaluation

Current protection requirements may be inadequate in the following areas:

- Standards for some medium and small Type F streams in western Oregon may result in short-term temperature increases at the site level. However, the significance and scope of this increase is uncertain, and it may be offset at the landscape scale by other factors. Relevant to

the habitat modification standard and criteria, large wood potential for some of these streams are less than what was assumed under the 1994 rules.

- Standards for some small Type N streams may result in short-term temperature increases at the site level that may be transferred downstream (this may impact water temperature and cold-water refugia) to fish-bearing streams. The significance and scale of this change is uncertain, and it may be offset at the landscape scale. Relevant to the habitat modification standard and criteria, large wood potential delivered by debris torrents (typically in areas of very steep topography) along these streams may be less than optimal.

For large Type F streams, shade levels appear to be adequate, and large wood outputs for these streams is consistent with that assumed under the 1994 rules.

With the exception of the issue of wet-weather hauling and steep-slope ground skidding and those areas noted above, the FPA appears to be adequate when implemented successfully.

Holistic Evaluation

Over time and space the forested landscape changes. Disturbance is an important process for maintaining productivity and resetting the environment, but it can also have a number of impacts to water quality parameters. Human activities can alter the frequency and magnitude of disturbance relative to historical patterns. While some human activities, like timber harvesting, may be more frequent than historical rates of disturbance, harvesting may also be less intense of a disturbance as compared to, for example, historical wildfire. Other impacts, like fire suppression, may reduce the frequency of disturbance, but result in somewhat more intense disturbances when fires do occur. The frequency and intensity of the event can influence vegetative and other disturbance recovery. Human activities to reduce adverse effects, therefore, need to be evaluated against historical patterns of disturbance.

The current distribution of forest stand age classes, the levels of tree stocking in managed plantations, and fire suppression have resulted in well-stocked, dense, closed canopy conifer stands across a larger portion of the forested landscape than has historically occurred. Thus the current rules and practices likely result in an increased level of shade at a landscape scale. At a site-specific scale, however, some level of risk exists along some streams, as noted in the next section. The significance of this risk in terms of influencing stream temperatures at a watershed (or sub-basin) scale is uncertain.

More arguably, higher conifer stocking levels across the landscape in upland and riparian areas may result in an increased potential for large wood delivery. The likelihood of such additional stocking resulting in increased large wood production is dependent upon the harvest levels, retained trees, natural mortality and other disturbance events. Until the sizes of riparian trees increase through normal growth volume may be limited, even though the number of trees may be relatively high. Nonetheless, current practices are likely sufficient at a landscape scale.

Temperature

The following is an evaluation of the temperature standard by specific stream types and sizes:

Medium and small Type F streams: Current research and monitoring results show that current RMA prescriptions for western Oregon may result in short-term temperature increases on some Type F streams; however the significance of the potential temperature increases at a watershed (or sub-basin) scale is uncertain.

Small Type N streams: Current research and monitoring results show current practices may result in short-term (two to three years) temperature increases on some Type N streams. The significance of potential temperature increases on Type N streams to downstream fish-bearing streams and at a watershed (or sub-basin) scale is uncertain.

All other streams: Influences on stream temperatures from shade levels resulting from specific BMP prescriptions for the other stream category types have not been assessed due to a lack of relevant data. However, in light of the data and findings specific to medium and small Type F streams, and given the higher level of vegetation retention on large Type F streams, it is likely that the standard is being met on large Type F streams.

Sedimentation Standard

The intent of the sedimentation standard as it applies to the FPA is to minimize soil and debris entering waters of the state. (OAR 629-30-000(3)) With the exception of wet-weather road use, complying with the road construction and maintenance rules currently in place is likely to result in meeting water quality standards. The rule and guidance recommendations described in the next section of this report will work towards ensuring the goals of the FPA and water quality standards are being met.

Turbidity Standard

Given the lack of quantitative data to specifically address the turbidity numeric standard, the turbidity standard is evaluated qualitatively. The intent of the turbidity standard, as it applies to the FPA, is to minimize soil and debris entering waters of the state. (OAR 629-30-000(3)). Both the FPA and water quality standards are being met when unfiltered surface runoff from road construction is entering applicable waters of the state and there is a visible difference in the turbidity of the stream above and below the point of delivery of the runoff for less than a two- or four-hour duration (depending on the stream grade and with all practicable erosion controls in place). When unfiltered surface runoff from general road use is minimized, and/or if all applicable BMPs have been applied, both the FPA and water quality standards are being met as well.

With the exception of wet-weather road use, complying with the road construction and maintenance rules and guidance currently in place is likely to result in meeting water quality standards. The rule recommendations will help improve compliance and implementation of the FPA to ensure the goals of the FPA and thus water quality standards are being met. Specific to

wet-weather hauling, construction and maintenance standards should be developed for roads at risk for sediment delivery. Prohibiting hauling during periods of wet weather on road systems that have not been constructed with specific standards for surface materials, drainage systems, or other alternatives (paving, increased numbers of cross drains, sediment barriers, settling basins, etc.) will also minimize delivery of sediment streams.

Habitat Modification Standard

The FPA standard as it relates to habitat modification is “to grow and retain vegetation [along fish-bearing streams] so that, over time, average conditions across the landscape become similar to those of mature streamside stands;” and “to have sufficient streamside vegetation [along non fish-bearing streams] to support functions and processes that are important to downstream fish use waters and domestic water use.”(OAR 629-640-0000)

The following is an evaluation of the habitat modification standard described above by specific stream types and sizes:

Medium and small Type F streams: Monitoring data indicates the assumptions used to determine basal area targets for small and medium streams in western Oregon may not be consistent with what the RMAs are capable of growing along these streams. The data also shows that 60 percent of harvest operations occurring along fish-bearing streams do not result in management within the RMAs. There is a reasonable possibility that, under the current rules, some of these streams are not likely to result in the “desired future condition” in a timely manner, as described in the goals of the FPA.

Small Type N streams: There is increasing scientific evidence that small non-fish-bearing streams prone to debris flows provide an important source of large wood for downstream fish habitat. While these streams are providing some level of functional large wood inputs and shade production under the current rules, the rules were not specifically designed to retain significant sources of large wood and shade in these areas. There is a reasonable possibility that, under the current rules, some of these streams are not likely to adequately support functions and processes important to downstream fish use waters, as described in the goals of the FPA.

All other streams: Influences on habitat modification resulting from specific best management practices for the other stream category types have not been assessed since they were considered a lower priority. However, given the higher level of vegetation retention on large Type F streams, and in light of the data and findings specific to medium and small Type F streams, it is likely the standard is being met on these streams.

Fish passage blockages: Since 1994, the FPA has required juvenile fish passage be provided on all fish-bearing streams. Current monitoring information does not indicate Forest Practices policies need to be significantly changed on how to install fish-passable stream crossings. With few exceptions, it appears when the guidelines are implemented correctly, the success rate is high for creating conditions believed to provide a high likelihood of fish passage.

Biocriteria Standard

This standard is consistent with multiple FPA purposes and goals that refer to the sound management of soil, air, water, fish and wildlife resources, while at the same time ensuring the continuous growing and harvesting of forest tree species. Given the general nature of this standard and the lack of specific criteria to use in evaluating this standard, biocriteria cannot be explicitly evaluated at this time. It is reasonable to assume that, given the inter-related nature of the temperature, sediment, turbidity and habitat modification parameters relative to biocriteria, to the extent these other parameters are being met, the biocriteria standard is likely to be met as well.

Recommendations

The FPA goals and objectives, as well as most of the state water quality standards and criteria being evaluated in this analysis (temperature and turbidity being the exceptions), are qualitative in nature. Thus, conclusions regarding the effectiveness of the rules in meeting the goals and objectives are qualitative as well. Available data relevant to those quantitative water quality standards (i.e. temperature and turbidity) is inadequate to draw specific and comprehensive conclusions about the adequacy of current practices; therefore, the evaluation of these criteria is also qualitative.

Data in many areas is lacking and, in many cases, not comprehensive. In light of this, any policy decisions made when this report is completed will depend upon professional judgement consistent with available scientific information. As the Board of Forestry considers these recommendations, social and economic factors, along with the scientific evidence on the adequacy of current practices presented here, will be considered as well.

The following recommendations are offered to highlight general areas where current practices could be improved upon to better meet the FPA goals and objectives and, in turn, provide greater likelihood of meeting water quality standards.

Recommendation #1: The RMA basal area retention standards should be revised, where appropriate, to be consistent with achieving characteristics of mature forest conditions in a timely manner; and to ensure that RMAs are providing desirable amounts of large wood and shade over space and time.

Recommendation #2: Revise current practices so desirable amounts of large wood are available along small stream channels that can deliver debris torrents to Type F streams. Ensure that adequate shade is maintained or rapidly recovered for riparian areas along small perennial Type N streams with the potential to impact downstream Type F waters.

Recommendation #3: Provide additional large wood to streams by actively placing the wood in areas where it will provide the greatest benefits to salmonids.

Recommendation #4: Reduce the delivery of fine sediment to streams by installing cross drains to keep drainage waters from eroding slopes. This will allow filtering of sediments and infiltration of drainage water into undisturbed forest soils. Cross drains should not be confused with stream crossing culverts. Cross drains take water from the road surface and ditch and route it under/across the road, discharging the water downslope from the road.

Recommendation #5: Develop specific standards for roads that will be actively used during the wet season. This would include a requirement for durable surfacing of roads in locations where fine sediment can enter streams. This would also include ceasing to haul if roads have not been constructed with effective surface materials, drainage systems, or other alternatives (paving, increased numbers of cross drains, sediment barriers, settling basins, etc.) that minimizes delivery of sediment into streams.

Recommendation #6: Develop specific guidance describing how roads in critical locations would be reviewed to reduce road length, and determining when, despite the relocation, the road location would pose unacceptable risk to resources and not be approved.

Recommendation #7: Construct stream crossings that adequately pass large wood and gravel downstream, and provide other means for passage of large wood and sediment at those crossings that restrict passage. The transport mechanisms for large wood and gravel should include both stream storm flows and channelized debris flows. This would reduce the risk of debris backing up behind the structure, potentially resulting in catastrophic sediment delivery caused by washouts.

Recommendation #8: Develop specific steep-slope, ground-based, yarding practices, or add a prior approval requirement for ground skidding in high-erosion hazard locations.

Recommendation #9: Manage locations most prone to landslides (high-risk sites) with techniques that minimize impacts to soil and water resources. To achieve this objective, best management practices to protect landslide-prone terrain currently in guidance should be incorporated into the forest practice rules, while developing a better case history for evaluating the effectiveness of those practices. These standard practices are designed to minimize ground alteration/disturbance on high-risk sites from logging practices.

Recommendation #10: Provide for riparian functions along stream reaches above impassable stream crossing structures that have a high probability of recolonization by salmonids once the structure is replaced/improved. If an upstream reach has the capacity to be a fish-bearing stream, but is currently a non-fish-bearing stream because a stream crossing structure cannot pass fish,

the forest practices rules should be amended so the upstream reach is classified as a fish-bearing stream.

Recommendation #11: Facilitate the identification, prioritization, and restoration of existing culverts that currently do not pass fish. Culvert replacement should be accelerated above what is currently being done, specifically for family forestland owners who often do not have adequate resources to address this issue in a timely manner.

Recommendation #12: Provide a more effective and efficient means of classifying streams for “fish use.” Revise the forest practice rule definition of Type F and Type N streams using a physical habitat approach to classify fish-use and non-use streams.

Compliance and Effectiveness Monitoring

The goal of the ODF forest practices monitoring program is to evaluate the effectiveness of the forest practice rules. Monitoring results are used to guide future management practices through the rule revision process. The goal includes a commitment to address specific Oregon Plan issues. The forest practices monitoring strategy is currently being revised. The key areas identified for improvement include:

- Building understanding, acceptance and support for the monitoring strategy.
- Using random sample design to select all sites. This has been used for two current projects.
- Combining monitoring efforts at each site to increase efficiency (i.e. compliance monitoring and riparian function at the same site)
- Increasing coordination with other Oregon Plan monitoring efforts, most notably DEQ and ODF&W.
- Addressing issues at a watershed scale.
- Improving communication of project status and results, both internally and externally using newsletters and project publications.

The following are specific recommendations for future monitoring:

1. Maintain a riparian monitoring program that continues to monitor the effectiveness of riparian prescriptions and riparian functions to ensure water quality goals are achieved in the future.
2. Monitor improvement of forest roads at a landscape level, looking specifically at implementation of the road hazard and risk reduction project.
3. Evaluate the need for further road compliance and effectiveness monitoring following the completion of the BMP compliance monitoring project relating to road BMPs. Also evaluate the progress and effectiveness of current voluntary efforts under the Oregon Plan to upgrade existing culverts that do not pass fish.

4. Monitoring of watershed-scale effects relative to current practices along small Type N streams should be a priority to help narrow the current level of uncertainty.

The following are remaining issues identified in this report that may warrant future examination as additional information is available:

- Is the occurrence of blowdown having an effect on meeting the goal of achieving “over time, average conditions across the landscape become similar to those of mature forest conditions” in RMAs?
- Are current forest practices meeting the water quality standard with respect to cold-water refugia? (This analysis will not be possible until the DEQ develops the specific guidance necessary to identify cold-water refugia on the ground that can be evaluated against the standard.)
- What effect, if any, are current practices along small non-fish-bearing streams having on downstream sediment regimes?

The Board of Forestry is currently deliberating the recommendations introduced by the Forest Practices Advisory Committee (FPAC) in September 2000. The process of implementing changes to current BMPs will occur over the next few years and is likely to consist of both regulatory and non-regulatory measures. The ODF monitoring program is also beginning a new series of effectiveness monitoring projects to evaluate BMP sufficiency in protecting riparian functions and water quality. There may also be some issues with water quality parameters that are not specifically addressed in this report that could have an unknown potential for current practices to cause changes in water quality conditions. In these cases, the DEQ will coordinate with the ODF and its monitoring program to address these parameters as concerns are identified and documented. Specific details of future monitoring efforts will be determined once the FPAC recommendations are developed further and implemented. ODF's monitoring strategy will continue to be developed at that time.

DEQ/ODF SA Recommendations and Corresponding OFPA Rule Concepts

Sufficiency Analysis Recommendations	Draft Rule Concepts	ODF Recommendation	Board of Forestry Decision	Next BOF/ODF Action	DEQ Comments
1- revise basal area (size and number of trees) targets / achieve mature forest conditions and provide large wood and shade	8- basal area increase for small and medium fish-bearing streams (west)	Rule change	Continue on regulatory path 10/03	Pending information from DOJ on the potential effects of Measure 37	support rule change
	14- basal area targets (east)	No rule change - Lack of sufficient monitoring to indicate a problem	Not proceed approved 3/04	ODF will revise monitoring priority list	neutral, encourage monitoring
	10- no harvest within 1/2 riparian management area (RMA) (west)	Non regulatory - Rule Concept #8 likely sufficient	Voluntary path approved 9/03	ODF will develop voluntary measures through Oregon Plan	prefer rule, encourage monitoring
	11- retain largest trees within RMA (west)	Non regulatory - Rule Concept #8 likely sufficient	Voluntary path approved 9/03	ODF will develop voluntary measures through Oregon Plan	prefer rule, encourage monitoring
	9- limit harvesting within RMA to 40% (west)	Non regulatory - Rule Concept #8 likely sufficient	Voluntary path approved 9/03	ODF will develop voluntary measures through Oregon Plan	prefer rule, encourage monitoring
2- revise current practices so desirable amounts of large wood is available along small stream channels that can deliver debris torrents to fish bearing streams. Ensure that adequate shade is maintained or rapidly recovered for riparian areas along small perennial non-fishbearing streams with the potential to impact downstream fish-bearing waters	4- Wood from debris flows and landslides	Rule change	Continue on regulatory path 9/03	Pending information from DOJ on the potential effects of Measure 37	support rule change
	12- small non fish-bearing streams (west)	Rule change	Deferred decision 4/04	ODF will convene a stakeholder group to explore alternative approaches	rule language uncertain, BOF action uncertain, prefer rule change
	16- small non fish-bearing streams (east)	No rule change - Lack of sufficient monitoring to indicate a problem	Not proceed approved 4/04	ODF will revise monitoring priority list	prefer rule, encourage monitoring
	18- small non fish-bearing stream monitoring	(Rule change) - house cleaning, remove obsolete references	Continue on regulatory path 7/03	Pending information from DOJ on the potential effects of Measure 37. ODF will also revise their monitoring priority list	support rule change and encourage monitoring
3- provide additional large wood to streams by actively placing wood to benefit salmonids	7- Large wood placement (also increase active management basal area target)	Rule change	Continue on regulatory path 4/04	Pending information from DOJ on the potential effects of Measure 37	support rule change for west side, neutral on east side
	17- Fish habitat incentives	Non regulatory - statewide initiative	Not required	ODF will develop voluntary measures through Oregon Plan	initiative language uncertain
10- provide riparian functions along stream reaches above impassable culverts that are likely to be recolonized by salmonids after structures are removed or improved	3- provide habitat above human caused fish barriers	Rule change	Continue on regulatory path 4/04	Pending information from DOJ on the potential effects of Measure 37	support rule change
12- revise the FPA rule definition of fish-bearing and non fish-bearing streams by using physical habitat approach to classify fish use and no fish streams					
Other	1- clarify water protection rules policy statement (DEQ also requested the incorporation of TMDL language)	Revise language to encourage/validate voluntary efforts; no action to date on DEQ request	Continue on regulatory path 7/03, then deferred decision 7/04	ODF will develop an issue paper with DEQ and DOJ to address TMDL language request	ODF/ BOF action uncertain, prefer rule change with TMDL language
	2- treat medium and large non fish-bearing streams as same size fish-bearing streams	No rule change - Lack of sufficient monitoring to indicate a problem	Voluntary path approved 3/04	ODF will develop voluntary measures through Oregon Plan	prefer rule, encourage monitoring
	5- channel migration zones	No rule change - Lack of sufficient monitoring to indicate a problem	Voluntary path approved 9/03	ODF will develop voluntary measures through Oregon Plan	prefer rule, encourage monitoring
	6- treat dense stands within RMA	Guidance on rules	Address through guidance	ODF will develop guidance	guidance language uncertain
	13- revision of desired future condition (east)	No rule change - Lack of sufficient monitoring to indicate a problem (address at a later date)	Further policy discussion approved 3/04	This topic will be included in the Dynamic Ecosystem white paper discussion	support no rule change
	15- provide harvesting alternatives (east)	No rule change - Lack of sufficient monitoring to indicate a problem	Not proceed approved 3/04	ODF will revise monitoring priority list	support no rule change

Rule package	Voluntary measures
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State of Oregon

Departments of Forestry and Environmental Quality

Memorandum

Date: September 24, 2004

To: Environmental Quality Commission and Board of Forestry

From: *S. Hallock* Stephanie Hallock, Director and *M. Brown* Marvin Brown, State Forester

Subject: Environmental Quality Commission and Board of Forestry Joint Discussion on Water Quality and Forest Practices
October 21, 2004 EQC Meeting

Purpose of Item The purpose of this joint Board of Forestry (Board) and Environmental Quality Commission (Commission) meeting is to discuss the Commission's authorities and processes for establishing state water quality standards and the Board's authorities and processes for meeting water quality standards through implementation of the Forest Practices Act (FPA). Discussion will include the statutory direction to the Board and Commission for rule revision under the FPA and the current status of the FPA rulemaking process and proposed rules. This meeting is a follow-up to the Commission's forest practices discussions on February 6, 2004 and July 7, 2004 and the Board's ongoing meetings since July 2003 regarding possible riparian protection revisions, and the workshop on September 7, 2004.

The Commission and the Board will tour private forestlands in the Tillamook area and discuss stream protection issues in the morning and will host a joint public meeting in the afternoon (See Attachment A for Joint Meeting Agenda). The meeting will consist of presentations regarding the relationship between the Board and the Commission; the general history of the interactions between the FPA and water quality standards; decisions that have been made to date regarding the current rulemaking; and issues of science, law and policy. Discussion of the information presented, and any necessary future steps will conclude the meeting.

Background The October, 2002 Sufficiency Analysis: A Statewide Evaluation of Forest Practices Act Effectiveness in Protecting Water Quality, identified a series of recommendations to improve the effectiveness of the FPA in achieving and maintaining water quality standards on state and private forest lands in Oregon. This joint review was conducted by DEQ and ODF staff under a 1998 Memorandum of Agreement. The Board and

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ODF staff under a 1998 Memorandum of Agreement. The Board and Commission unanimously accepted the report, and encouraged ODF and DEQ to incorporate its recommendations through appropriate means, including rulemaking.

The Sufficiency Analysis identified twelve recommendations that included improvements to the implementing rules or guidance of the Forest Practices Act and other recommendations under the Oregon Plan for Salmon and Watersheds (e.g., active placement of large wood in streams to create fish habitat). Attachment B, (Executive Summary of the Sufficiency Analysis) provides a summary of the Analysis including the specific recommendations on pages 8 through 10. ODF has completed rulemaking for recommendations involving roads and for those involving harvests on locations prone to landslides (Effective January 1, 2003). ODF initiated rule development for recommendations involving riparian areas, and has held a series of stakeholder meetings across the state on draft rule language. DEQ has actively participated in this rule development process, including attending many of the stakeholder and Board meetings.

Prior to the Sufficiency Analysis, the Independent Multidisciplinary Science Team (IMST) conducted an evaluation of the riparian protections of the FPA as part of the Oregon Plan for Salmon and Watersheds. IMST recommendations were provided to two stakeholder groups evaluating policy changes (i.e., the Forest Practices Advisory Committee, or FPAC, and the Eastside Riparian Functions Advisory Committee). These advisory groups arrived at many similar conclusions that were subsequently reached by the Sufficiency Analysis.

Concurrent with these Forest Practice processes, the EQC reviewed its water quality standards related to water temperature. The temperature standard review ultimately led to the adoption of new temperature standards in March 2004. The standards development process was informed by extensive scientific literary work conducted by the EPA at the regional level, and was reviewed by the Independent Multidisciplinary Team.

The Board is currently considering sixteen concepts and two statewide initiatives that are based on recommendations from the Sufficiency Analysis, the advisory committees and the IMST, as well as additional recommendations from Oregon Department of Fish and Wildlife (ODFW), DEQ, and other stakeholders. Attachment C, (Summary Table of the Sufficiency Analysis recommendations and corresponding

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FPA rule concepts) outlines the status of recommendations and actions to date.

The Board has directed the implementation of some recommendations as voluntary measures rather than incorporating them into their rules. The reason for addressing some of the recommendations through voluntary means rather than through rule relates to the Forest Practices Act statute (ORS 527.714) requirement for the Board to consider non-regulatory alternatives and to make certain findings of fact before adopting rules. One of the required findings is providing scientific documentation that degradation of resources is likely if forest practices continue to be conducted under existing regulations. ODF has recommended the use of voluntary measures where it cannot clearly document such degradation has or will occur.

Use of voluntary measures also provides an opportunity to generate more definitive information in the future through monitoring. Although specific monitoring plans have not been developed for proposed voluntary measures, ODF intends to develop voluntary measures through Oregon Plan between October 2004 and July 2005. If the monitoring results indicate that the voluntary measures are not effective in attaining water quality standards, the Board would have the information available to consider the appropriate rulemaking.

Since the initiation of the rulemaking process, the Board has approved four of the draft rules to go forward as potential rule requirements, and directed ODF staff to revise the proposed language to address concerns expressed during the regular Board meeting's public comment periods. At the July 2004 meeting, the Board approved revised draft rule language and directed ODF staff to proceed with economic cost and scientific analyses as required by ORS 527.714 for the following four concepts.

1. Provide habitat above human caused fish barriers
2. Provide wood for debris flows
3. Revise the large wood placement rule and active management basal areas (size and number of trees)
4. Increase basal area for medium and small fish bearing streams in Western Oregon

The findings are scheduled to be presented to the Board at the January 5, 2005 BOF meeting.

The Board, however, delayed moving forward with the revision of the water protection policy statement including Total Maximum Daily

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Load (TMDL) language as proposed by ODF based on a DEQ staff recommendation. (See the Key Issues section of this memorandum). This request was an addition to the FPAC and SA processes and recommendations.

- o Clarify the policy statement that outlines the goals of the Forest Practices Act's water protection rules

In addition, the Board approved the following five concepts as voluntary measures with the intent that they will be implemented under the Oregon Plan.

1. Treat medium and large non-fish bearing streams as same size fish bearing streams
2. Provide protection for channel migration zones
3. Limit harvesting within the riparian management areas to no more than 40 percent of the basal area
4. Limit harvesting to the outer half of the riparian management area
5. Retain the largest trees within the riparian management area

The Board deferred action on one concept that would provide for added protection on small non-fish streams. ODF plans to present a revised draft rule and recommendation to the Board in January 2005 (see the Key Issues section of this memorandum).

- o Increase protection on small non-fish bearing streams for Western Oregon

The Board determined the four remaining concepts require further monitoring prior to being considered as either rule changes or voluntary measures. No further action will occur on these four concepts during the current round of FPA's Water Protection and Riparian Function rulemaking process.

1. Modify protection on small non-fish bearing streams for Eastern Oregon
2. Revise desired future condition for Eastern Oregon
3. Revise basal area retention for Eastern Oregon
4. Provide harvesting alternatives for Eastern Oregon

The Board directed changes to ODF's guidance documents and training to address a concept related to thinning dense stands within riparian management areas. It was determined that this was already available

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under current rules, and simply needed clearer direction. A statewide initiative on monitoring small non-fish bearing streams will receive emphasis on ODF's monitoring priority list. A policy enhancement package addressing funding and staff for this has been included in the agency's 2005-07 biennial budget request. This recommendation does not require rule language, however, minor changes are being proposed to remove obsolete references in the rule. ODF has decided to incorporate the statewide initiative to create incentives for fish habitat into other efforts currently under development.

During the September 7, 2004 the BOF Forest Practices and Water Quality Workshop, Bob Baumgartner, DEQ's Policy Program and Project Assistance Section Manager, and ODF's Charlie Stone, former Forest Practices Program Director, reviewed the historical relationship between the Board and Commission regarding water quality protection. Additional topics presented and discussed included the geo-physical and biological science for riparian functions and stream temperature, and the context and ramifications of respective policy decisions made by the Board and Commission pursuant to statutory responsibilities. Attachment D, (Board of Forestry Workshop – Forest Practices and Water Quality Information Package) provides reference materials that were given to the Board prior to the September workshop.

Ian Whitlock and Larry Knudsen, Senior Assistants to the Attorney General, briefed the Board on the roles of the Commission and Board in protecting Oregon's water quality and the statutory requirements of the Board and Commission. The presentation covered issues related to the FPA and Oregon's Water Quality Standards. Attachment E, (Regulation of Water Quality and Forest Practices) a briefing paper was submitted to the Board.

One of the issues discussed at the workshop was what is referred to as the "BMP shield". ORS 527.770 states that forest operations conducted in accordance with BMPs shall not be considered in violation of any water quality standards. If at any time, the Commission with reasonable specificity believes that nonpoint source discharges of pollutants resulting from forest operations being conducted in accordance with the best management practices are a significant contributor to violations of such standards, the Commission has the opportunity to petition the Board to change the FPA rules in such a way that there is assurance that water quality standards are met. If the Board does not adopt revised standards or find revised standards are not required within a two- year timeframe, enforcement of water quality standards may be directed against a forest operator even though they

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are complying with existing FPA standards. There is an equal and reciprocal opportunity for the Board to petition the Commission if they determine the water quality standards are not appropriate for forestlands.

Both the Board and Commission are subject to the Administrative Procedures Act, however, there is a difference between the rule-making requirements of the Board and the Commission. When DEQ proposes to alter water quality standards, the proposed rule must be based on the best available science at the time to assure full protection for the most sensitive designated or existing beneficial uses. Science and policy guidance from EPA and concurrence from the National Oceanic and Atmospheric Administration, Fisheries (NOAA Fisheries) and the U. S. Fish and Wildlife Service (USFWS) are critical elements of the rule-making process. The Legislature has directed the Board to adopt BMPs that to the "maximum extent practicable" will meet water quality standards. In both authorities, science must be used to support the decision-making. In the case of the Board, it is also required to integrate a number of different policy objectives into its decision and to make specific findings. This set of policy objectives and required findings to a large degree define "maximum extent practicable" in the context of adopting BMPs.

Key Issues

1. Riparian Package

There are four concepts now proposed as rule changes and two concepts yet to be determined. If these were to be adopted as rules by the Board, there would be added riparian and water quality protections to the current Forest Practices rules applicable to western Oregon. These changes would address certain recommendations from the Sufficiency Analysis that have not been addressed thus far. These draft rules would add to the assurance that water quality standards would be attained on private and state forestlands. On the other hand, there is less certainty that riparian and water quality protection will be added to the current Forest Practices in eastern Oregon, since some of the proposed rules are applicable only to western Oregon. This is due primarily to the Board's determination that applicable scientific information to meet the requirements of ORS 527.714 is lacking at this time.

Additionally, if some of the rule concepts still under consideration for formal rulemaking result in direction to voluntary measures, there is in the opinion of DEQ less certainty that the water quality standards will

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be attained on private and State forestlands. One of the reasons DEQ has consistently encouraged adoption of most concepts in rule form rather than voluntary as well as the addition of protections on type N streams is to provide greater certainty that practices will lead to attainment of water quality standards on private and state forestlands since rules are applied uniformly. This is important to DEQ for a number of reasons, including the Environmental Protection Agency (EPA) authority to approve DEQ's water quality standards, TMDLs, and Coastal Zone Management Act Management Measures.

EPA may influence the Board's actions through their involvement with the Commission's implementation of federal programs. The Commission is responsible for implementing the Clean Water Act in Oregon with EPA's oversight. EPA must approve all of Oregon's water quality standards and TMDLs, and if deemed necessary, consults with NOAA Fisheries and the USFWS under the Endangered Species Act.

EPA has cited the need for revisions of the FPA in correspondences regarding the Coastal Nonpoint Pollution Control Program, which DEQ administers in Oregon, and in the approval letter for the North Coast TMDL. Since EPA retains authority to redirect federal funds if it is determined that Oregon does not have an adequate nonpoint source management plan, it is important for DEQ to address outstanding issues that EPA raises.

DEQ, however, acknowledges restrictions placed on the Board by ORS 527.714 and understands that the Board must fulfill the statutory requirements for the FPA. DEQ also understands, as mentioned previously, that the use of voluntary measures could provide an opportunity to generate more definitive information in the future through monitoring and appropriate oversight of the proposed voluntary measures. If the monitoring results indicate that the measures implemented are not effective in attaining water quality standards, the Board would then have the required information to consider rulemaking. If voluntary measures are endorsed by the Board, DEQ recommends that the implementation of concepts through voluntary measures be monitored at the level that will fulfill ORS 527.714 analysis requirements and the program will be implemented in a reasonable timeframe. There is no statutory requirement in the FPA for monitoring voluntary measures, so this recommendation will be addressed within the development of the voluntary measures.

2. TMDL and FPA Link

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In July of 2004, ODF added the TMDL language to the revision of the water protection rules policy statement at the request of DEQ. The Board, however, delayed moving forward with the revision until the Board could clarify their statutory responsibilities and further discuss this concept at a later meeting. ODF plans to readdress this recommendation at the January 2005 Board meeting following internal discussions.

When a TMDL is approved by the EPA, the TMDL Load Allocations provide descriptions of what is necessary to achieve water quality standards for that specific part of the watershed. This additional wording may clarify that the FPA's riparian rules meet numeric criteria or the TMDL Load Allocation. The insertion of this language is important to DEQ because it links the TMDL rule to the FPA rules. OAR 340-042-0080 (2) states, "The Oregon Department of Forestry will develop and enforce implementation plans addressing state and private forestry sources as authorized by ORS 527.610 through 527.992 and according to OAR chapter 629, divisions 600 through 665." Since the TMDL rule is fairly new (adopted in December of 2002), and it reiterates the fact that the FPA is the implementation plan for TMDLs, it is, in DEQ's opinion, important to state that the goal of the FPA is to meet water quality standards by implementing TMDL load allocations. In ODF's opinion, this is true only to the extent that they can address load allocations through regulations under the authority of the FPA. Both the FPA and Water Quality Management Plan process recognize that non-regulatory means are also appropriate. This has been particularly recognized for legacy issues. Furthermore, ODF continues to have major technical and policy concerns about load allocation through the application of maximum potential shade as a surrogate, and how TMDL Load Allocations are distributed across the watershed.

The Water Quality Management Plans that DEQ submits with each TMDL to EPA explains that FPA is the mechanism to achieve compliance with the TMDL Load Allocations. ODF is concerned that a direct rule link is inconsistent with the Board's responsibility under ORS 527.714 to ensure that rules it adopts are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern.

3. Type N Protection

ODF staff presented draft rule language to the Board in April, 2004, and recommended the concept for rule adoption. DEQ testified in

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support of ODF's recommendations to implement these protections in rule form. The Board also received fifteen testimonies that were not in support of ODF's recommendations. Four members of FPAC testified they no longer supported the FPAC recommendation to provide additional protection on small Type N streams due to ongoing scientific research information regarding temperature and the physical processes for transmission of heat downstream. The Board was provided scientific background information at the September workshop. This presentation is included as part of Attachment E. The Board deferred decision and directed ODF to develop a revised recommendation for the Board's consideration at a later date.

A brief history of Oregon's temperature standard is outlined in Attachment F. Some stakeholders that have questioned the interpretation and application of Oregon's temperature standard and pointed to uncertain outcome of currently ongoing research. The current temperature criteria, however, has been peer-reviewed and deemed scientifically credible from a number of different sources including the IMST (Attachment G, IMST Report on Oregon's Temperature Standard) and has been approved by EPA (March 2004).

Since the FPA's riparian rules are the mechanism for ensuring compliance with water quality standards, DEQ is concerned that if there are not additional protections on Type N streams, there is less certainty that the water quality standards for temperature will be met on private and state forestlands. DEQ believes Type N stream protection is warranted to comply with the cold water protection and is consistent with the Sufficiency Analysis recommendations. DEQ has on a number of occasions encouraged the Board and the ODF staff to proceed with adoption of additional protections on type N streams. DEQ will continue to work with ODF and stakeholders on refinements to the draft rule language regarding small type N streams that will be based on existing and emerging science and present to the Board in a reasonable timeframe.

Although the difference in statutory requirements for rule adoption makes alignment of levels of regulation a difficult task for DEQ and ODF, we are committed to assisting the Board and the Commission. As determined in the Briefing from the Senior Assistants to the Attorney General, the legislature has provided the agencies with a process and incentives to reach agreement. DEQ and ODF request the Board and the Commission to provide guidance for future cooperation and collaboration toward a resolution to the issues that have been raised in this memorandum.

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Next Steps The following actions are scheduled before the final rule adoption by the Board of Forestry planned for July, 2005.

January, 2005 BOF Meeting

- ODF plans to present its findings for the ORS 527.714 analysis and request approval to initiate formal rulemaking for the five concepts the Board has approved to date.
- ODF plans to present its recommendation for clarifying the policy statement that outlines the goals of the Forest Practices Act water protection rules.
- ODF may also present draft language to increase protection on small type N streams for western Oregon and may request to initiate ORS 527.714 analysis as well as formal rulemaking for this concept along with the five concepts in the rule package.

The rulemaking process will continue to include formal public comment and hearing processes.

**EQC/BOF
Involvement**

1. DEQ encourages the Commission to request that the Board continue to consider the riparian rulemaking as a priority and make the best effort to remain on the current timeline. Although DEQ realizes that the Board has a number of tough issues to weigh when adopting new rules, there have been agreements between ODF and DEQ on the applicability of available science regarding most of the rule concepts. The main topic to be explored is whether the current riparian rule package is still necessary to adequately address issues raised in the Sufficiency Analysis, and to provide reasonable assurance that the improved BMPs implemented through the FPA and voluntary measures will result in attainment of Oregon's water quality standards.

In this context, we will need to discuss whether there have been changes in policy and/or science that indicate new alternatives need to be considered. ODF and DEQ seek guidance in resolving the outstanding issue of type N streams as well as inclusion of TMDL language in the policy statement in the FPA's water protection rules.

2. Another issue to be discussed is whether the current water temperature standards and its application adequately consider key forest ecosystem processes and temporal and spatial disturbance patterns and their influence on beneficial uses. Although the Sufficiency Analysis identified recommendations for the FPA to meet

is an equal and reciprocal opportunity for the Board to petition the EQC if they determine the water quality standards are not appropriate for forestlands. DEQ and ODF are not recommending that either the Commission or the Board petition each other, but hope to provide the Board and Commission an adequate update of the rulemaking process and have the opportunity to present any questions and/or issues for a joint discussion.

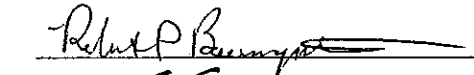
Attachments

- A. Agenda for the Joint BOF-EQC Meeting, October 21, 2004
- B. Executive Summary of Sufficiency Analysis: A Statewide Evaluation of Forest Practices Act Effectiveness in Protecting Water Quality
- C. Summary table of Sufficiency Analysis recommendations and corresponding FPA rule concepts
- D. Oregon Board of Forestry Forest Practices and Water Quality Workshop Supporting Information Package
- E. Regulations of Water Quality and Forest Practices
- F. A Brief History of the Oregon Temperature Standard
- G. Executive Summary of IMST Report: Oregon's Water Temperature Standard and its Application: Causes, Consequences, and Controversies Associated with Stream Temperature

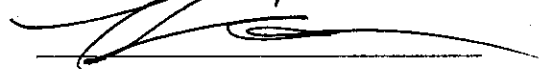
Approved:

DEQ

Section:



Division:



Report Prepared By: Koto Kishida

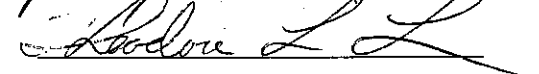
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Report Prepared By: Lanny Quackenbush

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Approved X
Approved with Corrections

Minutes are not final until approved by the Commission.

Oregon Environmental Quality Commission Minutes of the Three Hundredth and Twenty Second Meeting

**October 21-22, 2004
Regular Meeting¹**

On Wednesday, October 20, the Environmental Quality Commission (EQC, Commission) met with Department of Environmental Quality (DEQ, Department) staff during dinner to discuss local environmental issues and agency work. The dinner was held at 6:00 p.m. at The Fern restaurant, located at the 1000 North Main Street (Highway 101) in Tillamook.

Thursday, October 21, 2004 Joint Meeting of the Environmental Quality Commission and Board of Forestry

Beginning at 7:30 a.m. on Thursday morning, the Commission joined the Oregon Board of Forestry (BOF, Board) for a tour to observe stream protections on private forest land. After the tour, the Commission and Board held a joint public meeting at the Oregon Department of Forestry (ODF) Tillamook District Office, located at 5005 East 3rd Street in Tillamook. The joint meeting was called to order at 1:20 p.m.

The following BOF members were present: Steve Hobbs, Chair; Larry Giustina; Chris Heffernan; Barbara Craig; Bill Hutchison; and Jennifer Phillippi. Diane Snyder was absent.

The following EQC members were present: Mark Reeve, Chair; Lynn Hampton, Vice Chair; Deirdre Malarkey; and Ken Williamson.

BOF Chair Steve Hobbs and EQC Chair Mark Reeves introduced the joint meeting. The Chairs stated that the purpose of the meeting was to discuss the Commission's authorities and processes for establishing state water quality standards, and the Board's authorities and processes for meeting those standards through the Forest Practices Act.

Overview of Recent History and Decisions To-Date

Lanny Quackenbush, ODF staff, and Koto Kishida, DEQ staff, described the water quality protections and riparian function rule development process, including the types of recommendations, the status of rulemaking, the proposed rulemaking package, and voluntary measure and monitoring development. Discussion focused on the potential design of voluntary measures and corresponding monitoring and reporting requirements, small Type N (small non-fish bearing) streams, and channel migration zone protection.

Issues of Science

Gregg Cline and Jim Paul, ODF staff, reviewed the conclusions of the sufficiency analysis, focusing on stream temperature evaluations at the landscape, site specific and watershed scales. Bob Baumgartner,

¹ The staff reports for this meeting can be viewed and printed from DEQ's Web site at <http://www.deq.state.or.us/about/eqc/eqc.htm>. To request a copy to be sent by mail, contact DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204; phone: (503) 229-5990.

DEQ staff, described the process for determining state water quality temperature standards and methods for applying state standards to forest lands.

Issues of Law

Larry Knudsen and Ian Whitlock, Assistant Attorneys General with the Department of Justice, described the roles and partnerships of the Commission and Board in protecting water quality in Oregon. The attorneys explained that the Board's regulation of forest practices on private and state lands is almost entirely through state law, and the Commission's jurisdiction is the product of state statutes and federal delegations of regulatory authority. Mr. Knudsen explained that forest operations complying with the Forest Practices Act "best management practices" were considered to be in compliance with the EQC's water quality standards. However, if the EQC were to determine that the Board's "best management practices" were insufficient and remedies were not provided, the "best management practices shield" would be lost, and additional control measures could be imposed on forest operations. Ian Whitlock discussed the set of findings required of the Board when it sets standards by ORS 527.714.

Issues of Policy

Paul Slyman, DEQ Deputy Director, explained that DEQ was charged with implementing the Clean Water Act in Oregon with oversight from the U.S. Environmental Protection Agency (EPA). Mr. Slyman described policy issues associated with creating healthy, mature riparian areas and demonstrating achievement of water quality standards on forest lands. Marvin Brown, ODF State Forester, described the Board's criteria for establishing standards on private and state forest lands, and explained that the principle use of private forest lands was to grow and harvest timber, while state forest lands must be managed for the "greatest permanent value."

Public Comment

Mike Gearheard, Dave Powers and Socorro Rodriguez, of EPA Region 10, described EPA's role in water quality issues and the Endangered Species Act (ESA), and detailed areas where state rule changes were needed to ensure adequate protection for water quality and fish. Mr. Gearheard cited studies of current forest practices in Oregon that indicated that "best management practices" do not consistently meet water quality standards or fully provide riparian functions important to water quality and fish. Mr. Gearheard stated concern with Oregon's reliance on voluntary measures to protect on non-fish bearing streams and the degree to which voluntary approaches could reliably achieve water quality standards. Mr. Gearheard also acknowledged that regulatory actions have had a significant impact on the regulated community, and he agreed to engage in further discussions with ODF and DEQ.

Bill Arsenault, a family forest land owner and former Forest Practices Advisory Committee (FPAC) member, clarified his support of certain FPAC recommendations. He urged the Board and Commission to evaluate the social and economic consequences of new regulations to avoid the negative consequences of accelerating land conversion from forestry to other uses.

Robert Markle, of the National Marine Fisheries Service, stated that any changes to Oregon's water temperature standard would require EPA approval and include ESA consultation. In that case, improvements to the management of small, non-fish bearing streams, landslide prone areas, and cumulative watershed effects would be necessary to argue that forest practices meet water quality standards.

Paul Engelmeir, of the Mid-Coast Watershed Council, expressed support for DEQ's recommendations for rule changes, and urged the Board and Commission to review a report entitled, "*Status of Aquatic Habitat Inventory*," by Kim Jones of the Oregon Department of Fish and Wildlife.

Alan Thayer stated that the economic viability of small forest land operations was currently unstable, and he urged caution before adding any restrictive legislation.

Gary Springer, of Starker Forests, agreed that harvesting trees near small Type N streams resulted in a minimal temporary temperature increase, but he noted that there was no evidence of fish response to the

increase. Mr. Springer added that the timber industry supports rules backed by sound science, and voluntarily engages in aquatic protection measures outside of regulatory requirements.

Rex Storm, of Associated Oregon Loggers, stated that increasing water quality protection rules would jeopardize the success of the Forest Practices program. He recommended shifting the focus of protection from preventing disturbance to using active management to minimize the disturbance.

Dan Newton, of Roseburg Forest Products, argued that the rigid application of a static standard to a dynamic forest was not good policy, and he provided supporting information for his statements.

Dr. Michael Newton, Professor Emeritus at Oregon State University, outlined opportunities for improving the regulatory process to better link science with silvicultural practices and to increase protections in headwaters streams.

David Adams described his personal experience as a private forest land owner who manages his land in a sustainable way to benefit his heirs and for the greater public good. He expressed support for rules based upon objective criteria rather than voluntary guidelines based upon subjective points of view, often seeking short-term profit.

Board and Commission Discussion

Chair Reeve referred to the discussion points outlined in the agenda and invited Board and Commission member discussion. Clarifying the rulemaking timeline, Steve Hobbs stated that ODF would return to the Board in early 2005 with rule recommendations for small Type N streams. Chair Reeve urged ODF to focus on methods for demonstrating compliance with water quality standards, and stressed the importance of adequate monitoring and reporting of results.

Commissioner Williamson addressed key issues related to disturbance and stated that the lack of large woody debris in streams was a statewide problem. Commissioner Williamson commented that increasing basal area retention requirements would help move the state in the right direction, and he urged the Board and ODF to address the need for short term protections. Ted Lorensen, ODF Assistant State Forester, explained that current levels of large wood in streams reflected past practices and disturbance histories, and that the current Forest Practices Act provided incentives to encourage placement of large woody debris as a tradeoff for leaving additional basal area. Jo Morgan, ODF Oregon Plan Coordinator, explained that the incentives were under utilized because some landowners felt that certain permit conditions were disincentives. Board Member Craig asked whether there was substantive agreement on methods for placing large wood in streams. Mr. Lorensen responded that there was not. Ms. Morgan added that the state was continuing to work on these issues with the federal agencies involved.

Board Member Giustina stated that forest landowners were willing to protect water quality, but economic considerations must be justified and based on science. He added that well monitored, general prescriptions would be accepted by the landowner community if it was clear that they were necessary to meet water quality standards. Board Member Hutchison stated that efforts should be redoubled to develop an iterative and adaptive management approach to the issues raised. Commissioner Malarkey suggested that a facilitated joint retreat of the Board and Commission might help in making progress.

Board Member Phillippi commented that it appeared that there was not enough information to develop a rule for small Type N streams that would be clear or fair to landowners. She supported Mr. Williamson's suggestion to develop short-term solutions coupled with monitoring to illustrate compliance.

In closing, the Chairs commended both agencies for their cooperation and collaboration to find equitable solutions to the issues raised.

There being no further business before the Commission and Board, the joint public meeting was adjourned at 5:20 p.m. On Thursday evening, the EQC and BOF held an informal gathering with local officials to discuss water quality, forestry, and other environmental and economic issues. The gathering was held from 7:30 p.m. until 9:00 p.m. in the Swiss Hall, located at 4605 Brookfield Road in Tillamook.

Friday, October 22, 2004
Environmental Quality Commission Meeting

The EQC held a regular business meeting on Friday at the Tillamook County Courthouse, located at 201 Laurel Avenue in Tillamook. Prior to the regular meeting, beginning at 7:30 a.m., the Commission held an executive session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the DEQ. Executive session was held pursuant to ORS 192.660(1)(h).

The following EQC members were present for the meeting: Mark Reeve, Chair; Lynn Hampton, Vice Chair; Deirdre Malarkey; and Ken Williamson. Chair Reeve called the meeting to order at 9:15 a.m., and agenda items were taken as follows.

A. Approval of Minutes

The Commission reviewed draft minutes of the September 9, 2004 EQC meeting, and Commissioner Malarkey moved that the Commission approve the minutes. Commissioner Williamson seconded the motion and it passed with four "yes" votes.

B. Action Item: Mass Load Policy Interpretation - City of Salem Wastewater Treatment Facility

Mike Korten Hof, DEQ Western Region Water Quality Manager, and Mark Hamlin, DEQ Western Region Water Quality Permit Writer, recommended that the EQC approve a rule interpretation involving renewal of the National Pollutant Discharge Elimination System Permit for the City of Salem's wastewater treatment facility. Mr. Korten Hof explained that the proposed permit would provide for treatment of longstanding sewage overflows, and would increase pollution limits because treatment could not remove the pollution load from the overflows. Mr. Korten Hof recommended that the overflows be considered existing loads because they were not technically new and they were allowed under the existing permit.

Tim Gerling, City of Salem Public Works Director, explained the City's plan to nearly double their wastewater treatment capacity by making a \$720 million investment over the next five years. Mr. Gerling encouraged the Commission to approve the policy interpretation as recommended by the Department.

After consideration, Commissioner Hampton moved that the Commission approve the policy interpretation as proposed by the Department. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

C. Contested Case No. AQ/AB-NWR-03-099 regarding Vladimir Petrovich Ozeruga

The Commission considered a contested case in which Vladimir Petrovich Ozeruga appealed a proposed order and \$7,132 civil penalty for failing to require a DEQ-licensed asbestos abatement contractor to conduct an asbestos abatement project on a facility he owned in Northeast Portland. Larry Knudsen, Assistant Attorney General, summarized the findings of fact made by the Administrative Law Judge (ALJ) and asked the Commissioners to declare any ex parte contacts or conflicts of interest regarding the case. All Commissioners declared that they had no ex parte contacts or conflicts of interest. Mr. Ozeruga presented arguments on his behalf, and Bryan Smith, DEQ Environmental Law Specialist, and Anne Price, DEQ Office of Compliance and Enforcement Administrator, presented arguments on behalf of the Department.

The Commissioners discussed a number of issues, including whether the Mr. Ozeruga's actions were "negligent" as stated in the proposed order. After consideration, Commissioner Hampton moved that the Commission uphold the ALJ's proposed order with the exception of the "R" factor. Commissioner Hampton moved that the "R" factor be changed from 2 to 0 based upon the Commission's determination that the ALJ interpreted the law incorrectly in finding that Mr. Ozeruga's actions were negligent and in assigning a value of 2 to the "R" factor. Commissioner Williamson seconded the motion and it passed with four "yes" votes. Chair Reeve asked Mr. Knudsen to draft the final order for the Director's signature on the Commission's behalf.

D. Contested Case No. AQ/AB-NWR-03-134 regarding William M. McClannahan

The Commission considered a contested case in which William M. McClannahan appealed a proposed order and \$10,000 civil penalty for failing to require a DEQ-licensed asbestos abatement contractor to conduct an asbestos abatement project on a facility he owned in Hermiston. Larry Knudsen, Assistant Attorney General, summarized the findings of fact made by the Administrative Law Judge (ALJ) and asked the Commissioners to declare any ex parte contacts or conflicts of interest regarding the case. All Commissioners declared that they had no ex parte contacts or conflicts of interest. Mr. McClannahan presented arguments on his behalf, and Bryan Smith, DEQ Environmental Law Specialist, and Anne Price, DEQ Office of Compliance and Enforcement Administrator, presented arguments on behalf of the Department.

The Commissioners discussed the case with Mr. McClannahan and Mr. Smith. After consideration, Commissioner Hampton moved that the Commission affirm the ALJ's proposed order. Commissioner Malarkey seconded the motion and it passed with four "yes" votes. Chair Reeve asked Mr. Knudsen to draft the final order for the Director's signature on the Commission's behalf.

Public Forum

At noon, Chair Reeve asked whether any members of the audience wished to provide public comment to the Commission. No one expressed a desire to comment.

E. Informational Item: Overview of Proposed Changes in Environmental Enforcement and Compliance Rules

Anne Price, DEQ Office of Compliance and Enforcement Administrator, briefed the Commission on proposed changes to DEQ's rules governing the enforcement of Oregon's environmental regulations and statutes, including civil penalty assessments and orders. Ms. Price explained that in 2001, the Department began a comprehensive review and update of the enforcement rules to ensure that DEQ's enforcement program continues to be equitable, consistent, and understandable to Oregonians. The Commissioners discussed the history of the rulemaking, key issues and next steps. Ms. Price stated the Department's intent to propose the new rules for Commission adoption at the December 9-10, 2004 EQC meeting.

F. Director's Dialogue

Paul Slyman, DEQ Deputy Director, who was sitting in for Director Stephanie Hallock, discussed current events and issues involving the Department and the state with Commissioners.

G. Informational Item: Status of Chemical Agent Destruction Activities at the Umatilla Chemical Agent Disposal Facility

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, gave an update on the status of recent activities at the Umatilla Chemical Agent Disposal Facility (UMCDF), including the start of chemical agent operations, recent events at the facility, and activities of other demilitarization facilities nationwide. The Commissioners discussed work at the UMCDF with Mr. Murphey, and thanked him for his presentation.

H. Informational Item: Portland Area Carbon Monoxide Plan and the Oxygenated Fuel Requirement

Annette Liebe, Acting DEQ Air Quality Division Administrator, briefed the Commission on issues related to the proposed Portland Area Carbon Monoxide (CO) Maintenance Plan. Ms. Liebe explained the Department's intent to bring the plan to the Commission for consideration at the December 9-1, 2004 EQC meeting. She explained that a controversial element of the plan was whether or not to continue the existing oxygenated fuel requirement.

The Commission discussed the plan and the oxygenated fuel requirement, and invited members of the public to provide comments on the proposal. The following people provided testimony.

Bill Bradbury, Oregon Secretary of State, explained the benefits of using renewable fuel in Oregon, including job creation, and encouraged the EQC to continue and expand the current oxygenated fuel requirement.

Dale Buck, a retired Tillamook dairy farmer, spoke on behalf of the Oregon Farm Bureau, in favor of keeping the oxygenated fuel requirement because of his interest in the establishment of new ethanol plants.

Tom Koehler spoke in favor of keeping the oxygenated fuel requirement.

Charles Carlson, President of Cascade Grain Products, an ethanol plant that may be sited in Oregon, spoke in favor of keeping the oxygenated fuel requirement to support the ethanol industry.

Steve O'Toule, Executive Director of the Petroleum Association of Oregon, expressed support for eliminating the oxygenated fuel requirement.

Brian Doherty, representing the Western States Petroleum Association, spoke in favor of eliminating the oxygenated fuel requirement because scientific information does not support keeping it.

Shawn Reiersgaard, Environmental and Political Director of the Tillamook County Creamery Association, spoke in support of keeping the oxygenated fuel requirement to benefit Oregon agriculture.

Deborah Kafoury, former State Legislator, spoke in favor of continuing the oxygenated fuel requirement.

Neil Koehler, representing Kinergy, an ethanol marketer and producer, spoke in support of continuing the oxygenated fuel requirement because ethanol is lowering the cost of gasoline and is a renewable resource.

Chair Reeve thanked those who testified for their comments.

I. Rule Adoption: Addressing Inconsistencies between the Pollution Control Facilities Tax Credit Law and Rules

Helen Lottridge, DEQ Management Services Division Administrator, and Maggie Vandehey, DEQ Pollution Control Facilities Tax Credit Coordinator, proposed permanent rule changes to address inconsistencies between the pollution control facilities tax credit statutes and rules relating to filing deadlines. Ms. Vandehey explained that the tax credit statutes changed in 2001 to shorten the application filing time from two years to one year after construction of a facility is substantially completed. DEQ rules stated that an application must be filed within two years of completion. In May 2004, the Commission adopted a temporary rule to address the inconsistency, and the Department then began the permanent rulemaking process. The Commissioners discussed the change with Ms. Lottridge and Ms. Vandehey. Commissioner Williamson moved that the Commission adopt the rule as proposed. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

J. Informational Item: Independent Spent Fuel Storage Installation Tax Credit Certification

Helen Lottridge, DEQ Management Services Division Administrator, and Maggie Vandehey, DEQ Pollution Control Facilities Tax Credit Coordinator, sought direction from the Commission on the breadth and depth of discussion desired at the December 9, 2004 EQC meeting with regard to the Independent Spent Fuel Storage Installation (ISFSI) tax credit. Ms. Lottridge explained that the Commission granted preliminary certification to the ISFSI as a pollution control facility in September 2000. Larry Knudsen, Assistant Attorney General, described the legal options available to the Commission when considering tax credit certification of the facility at the December meeting. Denise Saunders, an attorney representing PGE, spoke to the Commission and expressed support for moving forward with considering the facts necessary to grant final certification.

The Commissioners discussed the facility and tax credit consideration process with Ms. Lottridge, Ms. Vandehey and Ms. Saunders. After consideration, the Commission agreed that they wanted to discuss all

options available to the Commission, including denial of the final certification, at the December 9, 2004 EQC meeting. Chair Reeve thanked the presenters for their information.

K. Commissioners' Reports

Commissioner Hampton reported that after the September 9, 2004 EQC meeting in Coos Bay, she traveled to Florence and met with the City's Public Works Director to learn about their wastewater treatment plant and their municipal water system. Commissioner Hampton encouraged DEQ to assist the Florence community in working through the issues they are facing.

Chair Reeve adjourned the meeting at approximately 4:05 p.m.



Oregon

Theodore R. Kulongoski, Governor

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February 18, 2005



To Individuals and Groups Interested in the Work of the Oregon Board of Forestry

Greetings:

In the past few months, there has been an important change in the way the Board of Forestry approaches its work. Those who attend our meetings have heard mention of a "decision system," a "priority set of objectives," and a series of evolving work plans.

These are all pieces of a bigger picture, and I wanted to take a moment to summarize what we are doing and why.

To put it simply, we're adopting a more systematic way of setting priorities for action among the many issues before us, and of planning and overseeing the Oregon Department of Forestry's work in support of those priorities.

Some background. The Board faces a long list of complex issues, tasks, and responsibilities related to the sustainable management of Oregon's forestlands. These arise from many sources – including statutes, direction from the Governor or Legislature, activities of federal or other state agencies, and the evolving needs and interests of the public and our stakeholders. As citizens serving on a public board, we face great challenges in absorbing large amounts of information, in tracking the progress of multiple complex issues, and in determining where to best focus our time.

A new approach. The decision system that we are developing will help us address these challenges. By implementing the new decision system, we seek to increase our effectiveness as leaders in crafting public policy, and to ensure that we stay on track in implementing the visions described in the *Forestry Program for Oregon*.

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Here are the main elements of the new decision system:

- A yearly issues scan, when the Board will develop a list of work priorities for the coming year. Some of these may be ongoing issues; others may be newly emerging. With each issue, it's important the Board identify possible outcomes for its work, such as a legislative concept, a new or changed administrative rule or policy, or direction to the department to undertake a particular initiative. In the future, we expect to conduct this issues scan each fall. The Board has developed its first list of priority objectives under the new process. A brief summary of the priorities follows this memo.
- The development, in consultation with department staff, of work plans to address each priority. These will include many elements, including information-gathering steps, means of collecting and addressing public input, timelines, and methods for monitoring and reporting progress. The Board has begun to review the proposed work plans developed by the department. As these drafts come to the Board, they will be included with the agenda materials that are available in advance of each meeting.
- A final disposition by the Board. This may be the policy decision or other outcome that we envisioned initially, or some other action.

The benefits. We have spent considerable time since late last year in developing not only the steps of this system, but also a means of documenting each step in the process – from our initial decision to adopt a priority objective to its eventual disposition. We are not done with this work; I expect the system will continue to evolve over the months ahead.

This is a worthwhile investment of time for us and for the department. I believe the new decision system will:

- Help the Board establish priorities among the many issues we face, and to focus resources on the key policy questions we need to resolve.
- Improve accountability by making clear to the public what the priorities are, what we are doing to address them, and how we're doing in realizing the vision of the *Forestry Program for Oregon*.
- Streamline the process, allowing us to make the best use of our time in absorbing information and tracking complex, interrelated issues.
- Help us and our stakeholders track and understand how decisions made in one priority area affect other areas.

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Ultimately, it will help us do what the Governor, the Legislature, and the citizens of Oregon expect of us, and what we have committed to do through the *Forestry Program for Oregon*: Make the best possible policies and decisions, based on the best science available and a broad range of public and stakeholder input.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen D. Hobbs". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen D. Hobbs, Chair
Oregon Board of Forestry

attachment

cc: Members of the Oregon Board of Forestry
Mike Carrier, GNRO
ODF Leadership Team

Seven Priority Objectives

February 18, 2005

Using elements of its new decision system, the Board has identified seven priorities that will shape our agenda during 2005, and possibly beyond. These are broad areas, reflecting our efforts to “bundle” smaller, related issues or initiatives. Each relates to strategies or other elements of the *Forestry Program for Oregon*. The department and Board are in various stages of drafting and reviewing work plans to address the areas, a process that will continue for several months. The priority areas are substantial and just the briefest summaries are provided below. Those who are interested are encouraged to take a look at drafts of the plans as they become available.

Implementation of the *Forestry Program for Oregon* (FPFO). The intent is to build Oregonians’ understanding, acceptance, and support for sustainable forest management, and to increase recognition of the Board’s leadership role, using the FPFO strategies and actions as the basis for discussion. Actions will include efforts to explain and promote FPFO strategies, and to develop sound indicators that can be used to measure progress toward implementing them.

State forests management. This priority area addresses a range of issues associated with state forests. *Adaptive management* involves working with a wide variety of stakeholders to determine whether new scientific and other information should lead to changes in management plans. The second key element involves continued work toward possible development of a *Habitat Conservation Plan* for state forests in Western Oregon.

The third involves developing an approach for the *systematic review of new scientific* information. The intent is to develop a process for the identification, evaluation, and synthesis of unbiased, credible research results that can be effectively incorporated into the decision-making process.

Forest viability. This area incorporates a variety of actions focusing on maintaining a healthy and productive forestland base, and encouraging landowner investments that enhance forest health. Among the many elements here are:

- Responding to Governor Kulongoski’s direction that the board work with the Oregon Economic and Community Development Department to develop a strategy to ensure the sustainability of Oregon’s forest sector and to enhance the sector’s contributions to our economy.
- Responding to the Governor’s direction to work with a broad range of groups to develop a unified vision of how Oregonians would like to see federal lands managed.

Outreach to urban populations. This priority area seeks to build urban Oregonians’ connections with forestry and its importance to our state’s quality of life. The work area envisions the use of various tools, such as urban forestry assistance, the Tillamook Forest Center, and public education opportunities, to raise urban Oregonians’ awareness about the principles and importance of sustainable forestry.

Dynamic ecosystems. This area involves the notion that landslides, blow-down and other disturbances we have often thought of as “damage” are in fact natural processes with some positive effects, such as benefits for wildlife habitat. Our objectives here include increasing scientific understanding of these processes, to improve policy-setting and resource-protection strategies.

Regulatory regimes. This priority area reflects the approach, expressed in the *Forestry Program for Oregon*, of using incentives and other non-regulatory means when possible, to lead landowners toward achieving public benefits – such as habitat protection – on private land. At the same time, however, this work recognizes the role regulations will continue to serve, and will incorporate several existing rulemaking efforts, along with analysis of the effects of Measure 37, and other activities.

Wildfire risk management. A key objective here is implementation of recommendations produced by a recent, comprehensive review of the department’s firefighting program. The recommendations cover a range of topics, including fuels reduction, fire prevention, business systems and workforce capacity. Another objective is completion of an ongoing review, conducted with many stakeholders and the Oregon Department of Environmental Quality, of the department’s smoke management program.

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BOARD ISSUES WORK PLAN

Title of Issue: Regulatory Regime
Date this issue was approved on a Priority Set of Objectives for Board of Forestry Work: February 4, 2005
Person(s) Responsible for Work Plan: Paul Bell
Title: Private Forests Program Director
Affiliation: ODF
Contact Information: 503-945-7482

Goal

To clearly consider public expectations for the contributions of forest landowners in meeting state goals (within the context of all ownerships and uses); and continuing the role of the Forest Practices Act as a cornerstone in meeting these expectations. (Based on *Forestry Program for Oregon* Strategy B and Key Action A.1)

Objectives

1. Establish Board policies about expectations for public benefits from private lands and landowner compensation for the impacts of regulation.
 - a) Address policy impacts of 2004 Ballot Measure 37 (BM 37). These are yet uncertain but may include impacts to Board policies and existing FPA policies. Where protections under the FPA are not exempt from BM 37 requirements, the Board will need to consider options to address the issue.
 - b) Consider emergency rules and long-term program policy changes in response to BM 37.
2. When forest practice regulations are necessary, minimize the adverse financial effects of regulations that require private landowners to contribute forest resources to provide increased public benefits (*FPFO* Action A.5).
 - a) Develop Board consensus about the findings under ORS 527.714, the application of maximum extent practicable under ORS 527.765, and consider legislative concepts for potential revisions.
 - b) Complete revisions to the forest practice rules related to water protection.
3. Develop and encourage the use of voluntary methods, such as landowner incentives, to achieve public policy goals on private forestlands; and promote ongoing voluntary resource restoration and enhancement efforts by forest landowners through the Oregon Plan. (Based on *FPFO* Actions A.7 and D.2)
 - a) Develop and adopt rule procedures and criteria for stewardship agreements under 2003 HB 3616 by coordinating with the Oregon Department of Agriculture, in consultation with the Oregon Department of Fish and Wildlife.

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4. Effectively and efficiently implement the regulatory elements of the FPA to maintain "one-stop" shopping and minimize program and compliance costs.
 - a) Revise the forest practice rules to comply with 2003 HB 3264, which replaced the State Forester's authority to "approve" written plans with "review and comment".
 - b) Consider emergency rules and long-term program changes in response to the administration of 2004 Ballot Measure 37 (process claims, make decisions about waiver versus compensation, etc.)
 - c) Address sensitive resource site protection sites that have not yet been through the process to as set forth in ORS 527.710 and OAR 629-680-100.

Background

The Oregon Forest Practices Act was passed in 1971 as the first comprehensive regulatory program governing the conduct of forest operations in the country. The Act actually built on statutes which had been in place since 1941 requiring provisions for the regeneration of forest stands after harvest. The Forest Practices Act also establishes best management practices to insure to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestland do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state.

The Forest Practices Act has continued to evolve through the years as more information was developed regarding forest operations, their impacts on the public resources the Act is intended to protect, and the effective means of providing protection while encouraging the continued active management of forest land.

Since its inception, the Oregon Forest Practices Act provided considerable discretion to the Board of Forestry in adopting regulations. With the adoption of the 1994 Water Protection Rules, there was increased concern among landowners about the incremental increases in riparian protection. As a result, the 68th Legislative Assembly in a 1996 special session adopted ORS 527.714 that has provided a set of standards for adoption of new rules by the Board that arguably placed additional limits on the Board's discretion in a number of ways. These limits were dominantly designed to ensure that voluntary approaches were considered, that regulations were thoughtfully prepared, and changes in protection standards were consistent to the extent that problems are related to and caused by forest operations. Despite these limits, the long-term debate about the role of regulation, "regulatory certainty", and compensation for the impacts of regulation (as opposed to take of property as defined by the constitution) continues.

The 68th Legislative Assembly approved SB 160 in 1995 during the regular session. This bill was subsequently vetoed by then Governor Kitzhaber. (ORS 527.714 passed during the 1996 special session and was originally part of SB160). During the course of discussion about SB160, landowners expressed a desire for a stable regulatory climate under which they can make long-term investments, that private forestlands not be asked to make an unfair contribution to resolving more commonly shared problems, and that they want to establish a limit on the burden the public might impose on them to provide public benefits.

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On the other hand, concern has been expressed that inappropriately constraining regulation undermines the adaptive management underpinnings of the Act. Limiting the application of forest practice rules could also undermine the "one stop" approach of the Act and/or encourage processes (e.g., initiatives) that might result in less thoughtful and deliberative consideration of protection issues than through the Board of Forestry. From the conservation community perspective they are concerned that remaining "gaps" between existing regulations and water quality standards, watershed conditions, and/or desired ecological conditions could not be addressed, or that perceived gaps would be widened. Absent improved and/or additional incentive programs to support their desired ecological outcomes, most in the environmental community is unlikely to support a regulatory compensation program even if limited to "disproportionate impacts."

The concern about "regulatory takings" resulted in Oregonians passing Ballot Measure 7 (BM 7) in November 2000 that would have required state compensation for regulations that restrict the use of real property, where the restriction reduces the value of the real property (the measure was subsequently determined not to meet legal standards for ballot initiatives). Ballot Measure 7 was a constitutional amendment that required, with limited exceptions, compensation for regulations that restrict the use of real property, where the restriction reduces the value of the real property. Prior to the passage of BM7, there were many court challenges to regulations as a "taking" of property. These challenges were often rejected on the basis that they did not prohibit all substantial economic use. The cases include challenges to limits on the physical extent of use or how real property is used such as: farm dwelling laws; forest practice regulations; bottle bill requirement to accept returns; subdivision approval conditions requiring annexation a fire district; building code requirements for the size of rooms; and restrictions on access to public roads. The Department and/or Board currently have several cases under litigation related to "takings" for the protection of "sensitive resource sites."

For the both the 2003 and 2005 Oregon Legislative sessions, the Department and Board again considered draft legislation related to the topic of "regulatory takings." For a number of reasons, a choice was made to not pre-session file a concept on behalf of the Board. The possibility of Ballot Measure 37 was one reason for the Board to not propose legislation for the 2005 session. Voters passed ballot Measure 37 in November of 2004. This measure is similar to Ballot Measure 7, but different in substantive ways, particularly that it is a statutory provision, not a constitutional provision.

There is a range of landowner concerns related to public resource protection "expectations" for private lands. The concerns can generally be described as landowners wanting to "know there will be an end or limit to the burden that might be imposed on private lands for public benefits." The notion of setting limits to expectations includes both limits to what should be accomplished through regulation and what is acceptable in terms of economic impact to private ownerships. Owners of forestland often express frustration that the public has higher expectations for forestlands in terms of public benefits than other lands uses. For example, this has resulted in forestlands having regulatory requirements for snags and green trees for wildlife habitat while other land uses do not have similar requirements.

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The standard of protection for resources protected through the Forest Practices Act has been "sound management of soil, air, water, fish and wildlife resources," with the notion of "overall maintenance" being the target for fish and wildlife. Over time, new expectations have been added to the scope of the Forest Practices Act, such as "sensitive resource sites," public safety, and scenic highways. The more recent authority related to scenic highways and public safety has specific limits within statute. Landowners express concern that regulation might be expanded into other areas such as recreation or harvest scheduling. There has often been pressure on the Board to limit forest practices further in such areas as community water systems to further reduce perceived impacts from forest operations to drinking water. Others have promoted that the requirements (to avoid take) of the federal ESA be incorporated into the forest practice rules. Additional areas of concern include adding new special sites (caves, talus slopes, etc.) to the list of protected sites.

Other landowners are concerned about "regulatory creep." The political pressure to incrementally increase protection creates economic uncertainty for landowners (including public lands). The Forest Practices Act does not currently establish either a "primary purpose" or "dynamic ecosystem" context for protecting the different resources that are identified in ORS 527.710 to be protected, nor does it draw limits on the use of regulation versus voluntary approaches.

As management practices have been established on public lands, there is a perception that these practices then become viewed by the public as desirable and appropriate for private lands. With the adoption of the recent FPFO, the Board more clearly articulated a framework of "primary purpose" for different forestlands and that it is not a sound objective to manage or "protect" all forestlands the same.

Increases in regulation in the nineties, listing of various fish species under the federal endangered species act, and more recently the passage of a regulatory compensation measure all encourage a serious look at voluntary approaches to achieving desired public benefits associated with the management of private forest land. The Board, in reviewing a number of riparian protection concepts for which there was little research or science to verify the inadequacy of current standards, has elected to pursue both voluntary measures and to direct additional monitoring and research efforts. This direction will lead to voluntary strategies and actions that private forest land managers may choose to implement, collaborative partnerships with state and federal natural resource regulatory agencies, and new incentives to support the private forest land manager.

Issue Identification

- 1. Ballot Measure 37**, passed in the 2004 election, creates a right for landowners to seek waiver of land use regulation or compensation when a land use regulation results in a reduction in fair market value of their property if the property was owned prior to the enactment of the land use regulation. Certain land-use regulations are exempt from such claims. Implementation of the measure raises a substantial number of legal, procedural, coordination, and workload issues.

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Ballot Measure 37 creates tremendous uncertainty and raises significant policy, legal, and practical issues for all land use practice, including forestry. BM 37 may undermine the policies of the Forest Practices Act related to maintaining the forest land base and maintaining the productive capacity of that land base. There is uncertainty about which of the BM 37 exemptions may apply to forest practice regulations. Future legal determinations will strongly influence some of the specific projects in this work plan such as development of new forest practice regulations. The Department is currently working on procedural and legal aspects with the Department of Administrative Services (DAS) and the Department of Justice (DOJ) as directed by the Governor. The Board may need to soon consider emergency rules to determine how the Department would evaluate claims and make decisions for either waiver or compensation.

The implementation of BM 37 and the related legal and policy developments have the potential to significantly impact the administration of the Forest Practice Act, as well as and the Board and Department's effectiveness in working towards the goals of the *Forestry Program for Oregon*. Over the course of the next year, as legal and policy determinations are being made on BM 37 and on the issue of "regulatory takings" in general, the Board and the Department have an opportunity to proactively influence these determinations for the betterment of the Forest Practice Act and *Forestry Program for Oregon*.

2. **ORS 527.714** has guided forest practice rule development since it became law in 1996. It establishes types of rules (procedural, definitional, and rules that set standards for forest practices) as well as necessary findings, analysis, and procedures for adopting rules. This statute affords the Board wide latitude in defining the procedures used to making findings and the supporting analyses. This statute has been applied on three occasions since it was passed: the pesticide application rules (1996); landslide and public safety rules (2002); and road drainage and wet season road use rules (2002).

The implementation of this statute is not contingent on Ballot Measure 37, however, the measure does inform how the findings and analyses are conducted. One of the findings requires the Board to consider "the availability, effectiveness, and feasibility of alternatives to the proposed rule, including nonregulatory alternatives." How BM 37 is ultimately implemented will influence how the Board will make their findings relative to the feasibility of alternatives, as well as their availability and effectiveness.

3. **2003 House Bill 3264** replaced the State Forester's authority to "approve" written plans with "review and comment." The bill states that the standards for operations set by the Act and rules should be "achieved through a combination of education and review prior to commencement of an operation and through enforcement actions where appropriate under state law, rather than through a system of prior approvals . . ."

The Board has discretion to identify cases when written plans are to be submitted that are in addition to written plans that are statutorily required in the Forest Practices Act. The Board may specify what must be included in a written plan and what constitutes a complete written

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plan. HB 3264 contemplates that written plans will be a mechanism through which the Department can promote compliance with the forest practice standards by providing comments to operators. That process can only work, or can only work well, if operators provide sufficient information.

The Board at its October 2004 meeting approved “guiding principles” for this process and a revised project work plan. The Board directed the Department to move aggressively to complete this project. In addition to the rule modifications that need to occur under HB 3264, this project will involve significant updates and/or additions to the current guidance on the implementation of the FPA.

Given that the implementation of HB 3264 does not propose any change to existing levels of regulations, this issue is independent of Ballot Measure 37 and can move forward regardless of how the measure is implemented.

4. **ORS 527.765** requires the State Board of Forestry to “. . . establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state.” When considering the effectiveness of the current rules in meeting water quality standards, it is within the Board’s discretion to define the “maximum extent practicable” threshold and whether or not it is being met.

The Department has been working on a revised set of draft water protection rules and voluntary recommendations for the Board of Forestry to consider and adopt. These proposed changes are based on recommendations from the Forest Practices Advisory Committee and the Eastside Riparian Functions Advisory Committee, as well as the Independent Multidisciplinary Science Team that has scientific oversight of the Oregon Plan for Salmon and Watersheds, and the water quality sufficiency analysis completed by the Department and the Department of Environmental Quality in 2002.

Rule concepts were first reviewed by the Board of Forestry in April and June of 2003. The Board directed the Department to return with proposed rule language for each of the concepts. Through 2003 and 2004, the Board considered each concept. The Department reviewed the concepts with the Regional Forest Practices Committees, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, and other interested parties. The Board has considered comment from these and other sources. By July 2004, the Board had completed its initial determinations on each of the concepts. Current deliberations are now considering the recommendations of the committees, as well as addressing new information that has come to light as a result of monitoring and research work that has been completed since the concepts were drafted.

The Department held a “Forest practices and water quality workshop” for the Board in September 2004, and a joint meeting with the Environmental Quality Commission (EQC) in

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October 2004 to review and discuss forest practices and water quality issues. One of the goals was to create a shared understanding of the legal, technical, and policy implications of the Board's decisions related to meeting water quality standards and the EQC's choices in setting water quality standards.

Those rule concepts that have been approved by the Board to be implemented using a voluntary approach can precede independent of issues associated with Ballot Measure 37. The implementation of rule concepts approved by the Board for rule development will be significantly impacted by the legal and policy developments associated with the measure.

- 5. 2003 House Bill 3616** directs the Board of Forestry and the Oregon Department of Agriculture, in consultation with the Oregon Department of Fish and Wildlife, to adopt rule procedures and criteria for stewardship agreements. This is one pathway for new incentives. However, the development of these rules offers an opportunity to look more broadly at incentives.

The Board of Forestry approved a project work plan for implementing HB 3616 at its January 2005 meeting. The Department has started implementing the work plan and is in the process of establishing a steering committee of 5 to 10 members that will gather needed information and develop options, and a rule advisory committee with broader representation that can provide feedback and assist in establishing a program from the various strategies developed by the steering committee.

This issue is independent of Ballot Measure 37 and can move forward regardless of how the measure is implemented.

- 6. Specified Resource Sites** including threatened and endangered fish and wildlife species, sensitive bird nesting, roosting and watering sites, biological sites and significant wetlands require the Board to collect and analyze the best available information and establish inventories of sites needing protection, determine whether forest practices conflict with such resource sites, consider the consequences of conflicting uses and determine appropriate levels of protection. The peregrine falcon, northern spotted owl, and marbled murrelet are all listed as threatened or endangered species by the Oregon Fish and Wildlife Commission or U.S. Fish and Wildlife Service (USFWS). The Board has established interim protection measures for spotted owls but has not addressed the other listed species nor addressed other potential sites.

Currently, significant wetland protection standards are based solely on size without regard to wetland functions and values. Wetlands with low habitat values have the same protection standards as those with high wildlife habitat values. A classification system that matches the physical characteristics and beneficial uses to protection measures may improve resource protection.

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It is the Department and Board's intent to initiate a systematic process of reviewing and reporting specified resource site protection effectiveness on a biennial basis as specified in current administrative rules.

Process and policies related to sensitive resource sites will be significantly impacted by the legal and policy developments associated with Ballot Measure 37.

Guiding Principles

The following guiding principles establish clear expectations and priorities to guide the implementation of the Regulatory Regime Work Plan:

1. The need to address the policy, legal, and operational impacts of Ballot Measure 37 (BM 37) provides the Board of Forestry with an opportunity to proactively influence policies about expectations for public benefits from private lands and landowner compensation for the impacts of regulation.
2. The next six to nine months is a critical period for influencing the policy debate and outcomes on BM 37, and will require substantial Board and Department resources to be successful.
3. Uncertainties around the impacts of BM 37 make rulemaking or rule revisions that will increase regulatory requirements challenging until some of the uncertainties are resolved.
4. Addressing the policy impacts of BM 37, and working to proactively influence the issues surrounding BM 37, will be the highest priority in the implementation of the Regulatory Regime work plan.
5. The Board and Department will continue to work on those projects unconstrained by BM 37: 2003 HB 3616, 2003 HB 3264, and those Water Protection Rule concepts approved for implementation under a voluntary approach.
6. Rulemaking action on other projects with the potential to result in increased regulatory requirements will be limited to technical and analytical work until a higher level of certainty around the policy impacts of BM 37 is created (example: Water protection Rule concepts approved for rule development, and Special Resource Sites).
7. This work plan will need to be iterative and fluid given that issues related to BM 37 could be addressed in any number of ways throughout the legislative session.

Overview of Action/Products Needed

Objective 1: Establish Board policies about expectations for public benefits from private lands and landowner compensation for the impacts of regulation.

- a) *Address policy impacts of 2004 Ballot Measure 37. These are yet uncertain but may include impacts to Board policies and existing FPA policies. Where protections under the FPA are not exempt from BM 37 requirements, the Board will need to consider options to address the issue.*
- b) *Consider emergency rules and long-term program policy changes in response to BM 37.*

Actions:

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Convene an ad hoc group of forestry stakeholders (the process has already started). This ad hoc group needs to have the involvement of BM37 sponsors to ensure credibility by the Legislature. Direct involvement of two members of the Board is also recommended due to the high level of policy impact and legislative timelines. We also recommend tapping into the expertise of the group that assisted staff develop the LC 629-05 issue paper. This group will:

- Have a dialogue about the possible intended and unintended impacts of BM 37 to the Board's policies and the policies of the FPA
- Develop alternatives that may clarify how BM 37 "exemptions" could or should apply to the FPA.
- Develop recommendations for modifications to FPA policies or rules where compensation is or may be required.
- Develop alternative approaches for implementing BM 37 with emphasis on how might compensation be provided.
- Provide a forum for Board and Department consideration of legislative Bills that may modify BM 37.
- Make recommendations to address identified issues and opportunities.

Products:

- An expanded and revised issue paper based upon the LC 629-05 issue paper.
- Recommendations for rule or statutory modifications to clarify exemptions under BM 37.
- Alternative approaches for modifying FPA policies or rules and/or providing a compensation program.
- Other recommendations as appropriate.

Objective 2: When forest practices are necessary, minimize the adverse financial effects of regulations that may require private landowners to contribute forest resources to provide increased public benefits.

It is the stated public policy of the State of Oregon, under ORS 527.630 of the Forest Practices Act (FPA), "to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with the sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors . . . to ensure the continuous benefits of those resources for future generations of Oregonians."

This objective is achieved through a science-based approach to rulemaking, as well as through an active monitoring program that provides a continuous evaluation of the Water Protection Rules. The Department reports to the Board on an annual basis about current monitoring efforts and presents findings and recommendations for changes to practices when warranted.

Products:

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- Annual reports to the Board on current monitoring efforts, findings, and recommendations for changes to practices when warranted.
- Continued emphasis on a science-based approach to rule revisions with a focus on implementing Hinkle Creek paired watershed study and at least two additional studies.
- Develop an evidence-based science process to address forest practice issues. This will be a department-wide effort, coordinated with other programs in the Department.

Objective 2a: Develop Board consensus about the findings under ORS 527.714, the application of maximum extent practicable under ORS 527.765, and consider legislative concepts for potential revisions.

ORS 527.714 establishes types of rules (procedural, definitional and rules that set standards for forest practices) as well as necessary findings, analysis and procedures for adopting rules. The previous applications of ORS 527.714 are as follows:

1996 – Pesticide Application Rules – Untreated Buffers along Streams (Oregon Administrative Rules (OAR) 629-620-400 (7))

2002 – Landslide and Public Safety rules (Oregon Administrative Rules (OAR) 629-623-0000 through OAR 629-623-0800)

2002 – Road Drainage and Wet Season Road Use rules (OAR 629-625-0600(9) and OAR 629-625-0700).

As the above rules were adopted, the Board made its finding required under ORS 527.714 on a case by case basis. Other than the record related to rulemaking associated with these projects, the Board has not developed rules or policies about how to make its decisions with regard to the required processes and findings. As work on the Water Protection Rules has continued, members of the Board have raised concern about requirements under ORS 527.714. The Department has completed some of the required analyses for the proposed modifications to the Water Protection Rules, but the Board has not yet made a final determination on the ORS 527.714 findings for the proposed rule changes.

In addition to the requirements under ORS 527.714, ORS 527.765 requires that the Board "establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards."

The statute does offer guidance about what factors could be considered by the board in determining the *maximum extent practicable* (MEP) threshold when establishing best management practices. These factors "shall include, where applicable, but not be limited to:

- a) Beneficial uses of waters potentially impacted;
- b) The effects of past forest practices on beneficial uses of water;
- c) Appropriate practices employed by other forest managers;

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- d) Technical, economic and institutional feasibility; and
- e) Natural variations in geomorphology and hydrology."

The Board has not adopted rules or guidance for the procedures for making determinations on the MEP threshold under ORS 527.765.

Actions:

Under the work plan for this project, the Board will review the intent and application of ORS 527.714 using real applications pending in the work plan for Project 4a: Proposed regulatory changes to the Water Protection Rules. Specifically, the Board will first review staff's current application of ORS 527.714 with respect to rule concepts #3, #4, #7, and #8 of the proposed water protection rule package. This review will occur in a non-decision workshop setting as a basis for getting an understanding of ORS 527.714. The Board will either revisit the application of ORS 527.714 to these rule concepts for Board action at a later date, or table action pending further investigation of ORS 527.714.

Similarly, as part of its review, the Board will consider conducting an ORS 527.714 analysis for water protection rule concept #12 (small type N streams) for the purpose of further testing the application of the current ORS 527.714 statute. The Board will have the flexibility to adopt findings and accept analyses with respect to the ORS 527.714 analysis of rule concept #12, or table action pending the completion of needed changes in guidance, administrative rule or statute.

This structure of Board activity allows flexibility to advance the adoption of proposed water protection rules as appropriate and at the same time learn about what works and what does not with respect to ORS 527.714 and the underlying decision space, standards for analysis and findings, and the sequential timing of completing steps of ORS 527.714.

Related Regulatory Regime Work plan Components

1. ORS 527.765 – The timetable for proceeding with the Board's consideration of the ORS 527.714 findings and analysis for rule concepts #3, #4, #7, and #8 will depend on the timing and completion of this work plan component. Similarly, it is being proposed that a sequential decision model application of ORS 527.714 be the mechanism for conducting the planned review and re-draft of rule concept #12.
2. Measure 37 – Policy implications arising from the implementation of Measure 37 may point to changes or improvements in how the policy alternatives (i.e., consideration on voluntary alternatives) and the cost analysis components of ORS 527.714 are conducted. The effectiveness of adopting a regulatory rule versus a voluntary alternative needs to be evaluated in light of Measure 37. Further, the macro-economic impact analysis may need to account for the availability and occurrence of waivers to the application of the proposed rule pursuant to Measure 37. Lastly, the cost analysis of ORS 527.714 will likely need to include the fiscal impact of potential compensation liability pursuant to Measure 37.

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Products:

- Ian Whitlock, the Department of Justice contact attorney, will prepare a paper addressing the legal considerations related to the decision-space the Board has under each of the elements of ORS 527.714 and for making maximum extent practicable (MEP) decisions.
- Clarify the decision-space the Board has under each of the elements of ORS 527.714 and for making MEP decisions.
- Create a practical example of the outcomes of the possible approaches and decision-space under ORS 527.714 and MEP.
- Provide a forum at regular Board meetings to have dialogue and reach Board consensus about ORS 527.714 and MEP decisions.
- Provide opportunity for public/agency input.
- Adopt guidance and/or rules.

Objective 2) b): Consider revisions to the forest practice water protection rules.

In April 2003, the Board of Forestry began the process of addressing 18 Water Protection Rule concepts presented by the Department. These concepts were based primarily on recommendations that came out of the following reports and advisory committee processes:

IMST Forestry Report (September 1999)
Forest Practices Advisory Committee (September 2000)
DEQ/ODF Sufficiency Analysis (September 2002)
Eastside Riparian Function Advisory Committee (February 2003)

The Board directed the Department to present specific draft rule language for their consideration of each concept presented. Between June 2003 and June 2004, the Board and the Department worked through a detailed review of possible rule language and presentations of related monitoring and research information. During this review, the Department presented preliminary evaluations based on the findings and analysis required by ORS 527.714 and made recommendations to the Board on whether each rule concept was supported by sufficient evidence to support eventual formal rule adoption. As a result, the Board gave tentative approval to proceed with most of the concepts¹ in one of three ways:

1. Conditional approval for rule development:
 - ⇒ Rule concept 1—Water protection rule policy statement
 - ⇒ Rule concept 3—RMAs above fish barriers (approved, pending revision)
 - ⇒ Rule concept 4—Wood from debris flows and landslides on Type N streams
 - ⇒ Rule concept 7—Large wood placement
 - ⇒ Rule concept 8—Increased basal area targets for medium and small fish-use streams (western Oregon)

¹ The Board also approved of addressing rule concept six (related to riparian stratification) through guidance and training, and deferred action of rule concept 13 (the desired future condition of RMAs in eastern Oregon) pending future discussions related to the Board's Dynamic Ecosystem priority issue.

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- ⇒ Rule concept 18—Monitoring of small non-fish streams
- 2. Approval to implement under a voluntary approach:
 - ⇒ Rule concept 2—Fish bearing RMA standards for large and medium non-fish streams
 - ⇒ Rule concept 5—Monitor and evaluate channel migration zone issue
 - ⇒ Rule concept 9—60% basal area cap for RMAs (western Oregon)
 - ⇒ Rule concept 10—No harvest within one-half of the RMA (western Oregon)
 - ⇒ Rule concept 11—Retain largest trees within the RMA (western Oregon)
 - ⇒ Rule concept 17—Fish habitat incentives
- 3. Do not proceed due to a lack of information to support rule changes:
 - ⇒ Rule concept 14—Basal area targets (eastern Oregon)
 - ⇒ Rule concept 15—Active management within first 20 feet of RMA (eastern Oregon)
 - ⇒ Rule concept 16—Small non-fish stream protection (eastern Oregon)

Rule Concept 12 (small Type N stream protection in western Oregon)

In April 2004 the Board deferred action on rule concept 12 and directed the Department to continue working with landowners, technical specialists, agencies, and other interested parties to develop a satisfactory measure.

FPA/TMDL link

Additionally, the Department of Environmental Quality (DEQ) has made a request that the Forest Practices Act (FPA) rules be directly linked to TMDL rules (DEQ/ODF September 24, 2004, Memorandum to the Environmental Quality Commission and Board of Forestry). To help move towards a resolution of the issues related to water quality standards, the Department held a “Forest practices and water quality workshop” for the Board in September 2004, and a joint meeting with the Environmental Quality Commission in October 2004 to review and discuss forest practices and water quality issues.

Products:

- For the set of rule concepts with conditional approval for rule development, Department staff will implement a work plan for the rule development process (see attached draft work plan for Project 4a). The work plan would propose a Board of Forestry process to work through these concepts and come to a decision on implementation. The Board would review the completed ORS 527.714 analyses and maximum extent practicable decision process, and make a decision on how to move forward. These analyses may need to be revised based on pending information from the Department of Justice on the potential effects of Measure 37. These rule concepts themselves may also need to be revisited by the Board, depending on information pending from the Department of Justice on the potential effects of Measure 37.
- The Department staff will implement a work plan for the implementation of those concepts approved under a voluntary approach (see attached draft work plan for Project

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4b). This process would include using a collaborative process consistent with Oregon Plan for Salmon and Watersheds, and could include Board representation. Outcomes from this process would be brought to the Board to make a determination on final action.

- Those concepts the Board has determined not to proceed on due to a lack of information to support rule changes will be evaluated through a review of the monitoring program's existing list of monitoring and research questions. Additions to this list and prioritization will be updated and presented to the Board as part of the annual monitoring update required by rule.
- For rule concept 12 (small Type N stream protection in western Oregon), the Department will convene a stakeholder group to explore alternative approaches to achieving protection along small Type N streams in western Oregon. Recommendations from this group would be brought to the Board to make a determination on final action.
- Staff will develop an issue paper in collaboration with DEQ and DOJ about the pros and cons of creating a link between the FPA and TMDL load allocations. The issue paper will include the Department's recommendation for taking action on this concept.

Objective 3: Develop and encourage the use of voluntary methods, such as landowner incentives, to achieve public policy goals on private forestlands; and promote ongoing voluntary resource restoration and enhancement efforts by forest landowners through the Oregon Plan.

Project 4b (ORS 527.765) and the implementation of those voluntary measures contributes towards meeting this objective. For more details, see the attached draft work plan for this project.

Products: These are described in the attached draft work plan for ORS 527.765.

Objective 3) a): Develop and adopt rule procedures and criteria for stewardship agreements under 2003 HB 3616 by coordinating with the Oregon Department of Agriculture, in consultation with the Oregon Department of Fish and Wildlife.

See the work plan for 2003 House Bill 3616 approved by the Board January 5, 2005 and included in the minutes for that meeting for details on this objective.

Products: These are described in the work plan for the 2003 House Bill 3616 project.

Objective 4) a): Revise the forest practice rules needed to comply with 2003 HB 3264, which replaced the State Forester's authority to "approve" written plans with "review and comment".

See the work plan for 2003 House Bill 3264 approved by the Board October 22, 2005 and included in the minutes for that meeting for details on this objective.

Products: These are described in the work plan for the 2003 House Bill 3264 project.

Objective 4) b): Consider emergency rules and long-term program changes in response to the administration of 2004 Ballot Measure 37.

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Effectively and efficiently implement the measure

Products:

- Participate with the Department of Administrative Services (DAS) on procedural committee and develop recommendations for DAS to assist them to develop procedures and administrative rules.
- Work with DAS to develop procedures for accepting and processing claims.
- Develop a data base for tracking claims and any state/department interest acquired through compensation (done).

As soon as possible, create legal clarity around uncertainties in the measure

Products:

- Solicit Board for legal questions they may have about the measure and compile.
- Develop list of legal questions from the Board and provide to the Department of Justice (DOJ).
- Work with DOJ and others to develop a strategy for addressing legal issues, giving consideration to both for intended and unintended consequences.

Provide good customer service

Products:

- Prepare a chronological reference of statutes and rule adoption and documentation of when standards became effective.
- Work with Governor's Office to efficiently provide copies of the past statutes and rules upon request of members of the public/claimants.
- Assign workforce to accomplish additional workload of processing claims, analysis, and recommendations for final actions of claims and exemptions.

Identify points of evaluation and decision by the Board

Products:

- Gather input needed to determine if Emergency Rule(s) are necessary to assure resource protection under the Forest Practices Act and implement Measure 37, and present a summary to the Board.
- Develop draft rules to submit to the Board that set general policies regarding exemptions, waivers, and compensation.

Provide timely internal and external information

Products:

- Develop and schedule internal and external training sessions for employees and customers on Measure 37 implementation.

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- Work with Public Affairs to develop a communications Plan with target audience.

Objective 4) c): Address sensitive resource site protection sites that have not yet been through the process to as set forth in ORS 527.710 and OAR 629-680-100.

This objective (four) is applicable to projects that address 'efficiency and effectiveness' issues. The Specific Resource Sites draft work plan (attached) is an example of such a project. By initiating a systematic process of reviewing and reporting specified resource site protection effectiveness on a biennial basis as specified in current administrative rules, the Department and Board will work towards meeting this objective.

Products:

- Finalize and implement Specific Resource Sites work plan.

Research and Information Gathering

The research and information gathering process will be project-specific. See the attached project work plans for details.

Policy or Alternative Development and Outreach Processes

See the attached project work plans for details.

Recommendation/Polycymaking

Those projects that deal strictly with voluntary measures, or in the case of the ORS 527.765 project has voluntary components, can move forward with little impact from Ballot Measure 37. These include 2003 House Bill 3616, 2003 House Bill 3264, and those Water Protection Rules concepts that have been determined by the Board to proceed under a voluntary approach. Similarly, the review of ORS 527.714 and consideration of legislative concepts for potential revisions can also proceed.

The regulatory components of the ORS 527.765 and Special Resource Sites projects will be significantly influenced by how Ballot Measure 37 unfolds, making the implementation of these projects more challenging until there is more clarity on the Measure. Until the procedures and policies for implementation and administration of the Measure are clarified, progress on future rulemaking potentially affecting private property values will continue to be challenging. Still, there are other statutory requirements for Board rule-making requiring attention in the near future. Action on these topics ties closely to some of the objectives of the Forest Viability issue.

Time Frame

The 2003 HB 3616 and 3264 work plans, as well as the ORS 527.714 work plan, can proceed as described. Refer to those work plans for specific time frame details.

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The time frame for the Ballot Measure 37 work plan will extend indefinitely, and is contingent upon pending lawsuits, the outcome of proposed legislation to modify or replace the measure, and Department of Justice guidance on legal questions surrounding the measure.

The ORS 527.765 work plan, with the exception of the voluntary approach approved for some of the rule concepts, will be contingent upon the outcome of legal issues associated with Ballot Measure 37. It is likely that any substantial progress on the regulatory component of this work plan will be delayed until there is more clarification on the measure. Similarly, the Special Resources on Forest Land project is also likely to be delayed.

Milestones

See attached work plans for project-specific details.

Monitoring/Continuous Improvement

See attached work plans for project-specific details.

Individual Project Overview

Project 1: Ballot Measure 37 Draft Work Plan

Goal

To make policy decisions that insure Oregon's forests provide diverse social and economic outputs and benefits valued by the public in a fair, balanced and efficient manner. (FPFO-Strategy B)

Objectives

1. Establish Board policies about expectations for public benefits from private lands and landowner compensation for the impacts of regulation, and consider emergency rules and long-term program policy changes in response to Ballot Measure 37.
2. Effectively and efficiently implement the measure.
3. As soon as possible, create legal clarity around uncertainties in the measure.
4. Provide good customer service.
5. Identify points of evaluation and decision by the Board.
6. Provide timely internal and external information.

Background

Ballot Measure 37, passed in the 2004 election, creates a right for landowners to seek compensation when a land use regulation results in a reduction of fair market value of their property, if the property was owned prior to the enactment of the land use regulation or Agencies may issue a waiver of land use regulation(s). Certain land use regulations are exempt from such claims. Implementation of the measure raises a substantial number of legal, procedural, coordination and workload issues. Legal determinations may influence the related projects such as development of new forest practices rules. The Department is currently working on the procedural and legal aspects with DAS and DOJ as directed by the Governor. It is expected the Board will soon need to consider emergency rules to determine how the Department would evaluate claims and make decisions for either waiver or compensation.

Since its inception, the Oregon Forest Practices Act provided considerable discretion to the Board of Forestry in adopting regulations. With the adoption of the 1994 Water Protection Rules, there was increased concern among landowners about the incremental increases in riparian protection. As a result, the 68th Legislative Assembly in a 1996 special session adopted ORS 527.714 that has provided a set of standards for adoption of new rules by the Board that arguably placed additional limits on the Board's discretion in a number of ways. These limits were dominantly designed to ensure that non-regularity approaches were considered, that regulations were thoughtfully prepared, and changes in protection standards were consistent to

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the extent that problems are related to and caused by forest operations. Despite these limits, the long-term debate about the role of regulation, "regulatory certainty" and compensation for the impacts of regulation (as opposed to take of property as defined by the constitution) continues.

There is a range of landowner concerns related to public resource protection "expectations" for private lands. The concerns can generally be described as landowners wanting to "know there will be an end or limit to the burden that might be imposed on private lands for public benefits." The notion of setting limits to expectations includes both limits to what should be accomplished through regulation and what is acceptable in terms of economic impact to private ownerships. Owners of forestland often express frustration that the public has higher expectations for forestlands in terms of public benefits than other lands uses. For example, this has resulted in forestlands having regulatory requirements for snags and green trees for wildlife habitat while other land uses do not have similar requirements.

The standard of protection for resources protected through the Forest Practices Act has been "sound management of soil, air, water, fish and wildlife resources," with the notion of "overall maintenance" being the target for fish and wildlife. Over time new expectations have been added to the scope of the Forest Practices Act, such as "sensitive resource sites," public safety and scenic highways. The more recent authority related to scenic highways and public safety has specific limits within statute. Landowners express concern that regulation might be expanded into other areas such as recreation or harvest scheduling. There has often been pressure on the Board to limit forest practices further in such areas as community water systems to further reduce perceived impacts from forest operations to drinking water. Others have promoted that the requirements (to avoid take) of the federal ESA be incorporated into the forest practice rules. Additional areas of concern include adding new special sites (caves, talus slopes, etc.) to the list of protected sites. Other landowners are concerned about "regulatory creep." The political pressure to incrementally increase protection creates economic uncertainty for landowners (including public lands). The Forest Practices Act does not currently establish either a "primary purpose" or "dynamic ecosystem" context for protecting the different resources that are identified in ORS 527.710 to be protected, nor does it draw limits on the use of regulation versus non-regulatory approaches.

Increases in regulation in the nineties, listing of various fish species under the federal endangered species act, and more recently the passage of a regulatory compensation measure all encourage a serious look at voluntary approaches to achieving desired public benefits associated with the management of private forest land. The Board in reviewing a number of riparian protection concepts for which there was little research or science to verify the inadequacy of current standards, has elected to pursue both voluntary measures and to direct additional monitoring and research efforts. This direction will lead to voluntary strategies and actions that private forest land managers may choose to implement, collaborative partnerships with state and federal natural resource regulatory agencies, and new incentives to support the private forest land manager.

Issues Identification

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1. Evaluate alternative approaches for implementing Ballot Measure 37.
2. Determine current resource protections potentially impacted by measure.
3. Determine players and what are their interests to consider in administering current and proposed draft rule(s).
4. Impacts to forestland and tax deferral incentive programs.
5. Impacts to State Agency and Local Government Coordination.
6. Determine possible legislative action(s) to resolve conflicting objectives.
7. Evaluate legal strategies that may clarify administration of BM 37.
8. Evaluate the potential usefulness of Emergency rule(s).
9. Evaluate the affected policies and attempt to anticipate the effects and any unintended consequences.

Overview of Actions/Products Needed

Objective 1: Establish Board policies about expectations for public benefits from private lands and landowner compensation for the impacts of regulation, and consider emergency rules and long-term program policy changes in response to Ballot Measure 37.

Actions:

Convene an ad hoc group of forestry stakeholders (already started on the process). This ad hoc group needs to have the involvement of BM 37 sponsors to ensure credibility by the Legislature. Direct involvement of two members of the Board is also recommended due to the high level of policy impact and legislative timelines. We also recommend tapping into the expertise of the group that assisted staff develop the LC 629-05 issue paper. Actions of the group include:

- Having a dialogue about the possible intended and unintended impacts of BM 37 to the Board's policies and the policies of the FPA.
- Developing alternatives that may clarify how BM 37 "exemptions" could or should apply to the FPA.
- Developing recommendations for modifications to FPA policies or rules where compensation is or may be required.
- Developing alternative approaches for implementing BM 37 with emphasis on how compensation might be provided.
- Providing a forum for Board and Department consideration of legislative Bills that may modify BM 37.
- Making recommendations to address identified issues and opportunities.

Products:

- An expanded and revised issue paper based upon the LC 629-05 issue paper.
- Recommendations for rule or statutory modifications to clarify exemptions under BM 37.
- Alternative approaches for modifying FPA policies or rules and/or providing a compensation program.
- Other recommendations as appropriate.

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Objective 2: Effectively and efficiently implement the measure

Actions:

- Participate with DAS on procedural committee and develop recommendations for DAS to assist them to develop procedures and administrative rules.
- Work with DAS to develop procedures for accepting and processing claims.
- Develop a data base for tracking claims and any state/department interest acquired through compensation.

Products:

- Insert provisions in DAS administrative rules appropriate for forest resource claims.
- Finalize procedures for accepting and processing claims.
- Have a database in place.

Objective 3: As soon as possible, create legal clarity around uncertainties in the measure

Actions:

- Solicit Board for legal questions they may have about the measure.
- Develop list of legal questions, provide to DOJ.
- Work with DOJ and others to address legal issues and anticipate and plan both for intended and unintended consequences.

Products:

- Provide a compiled list of legal questions to DOJ.
- Compilation of issues and a summary of predicted consequences.

Objective 4: Provide good customer service

Actions:

- Gather historical information on statute and rule effective dates. Prepare a chronological reference to verify statute(s) and/or rule(s) effective for specific time frames identified in any claims.
- Work with Governor's Office to provide copies of the past statutes and rules upon request of members of the public/claimants.
- Develop an organization to accomplish additional workload of processing, analysis and final actions of claims and exemptions.

Products:

- Chronology of statutes and rule adoption and documentation of when standards became effective.
- File of all past statutes and rules from which copies may be reproduced.
- Workforce assigned to process claims and recommend final actions.

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Objective 5: Identify points of evaluation and decision by the Board

Actions:

- Gather input needed to determine if Emergency Rule(s) are necessary to assure resource protection under the Forest Practices Act and implement Measure 37.
- Assess and discuss response of interested parties.
- Develop draft rules that set general policies regarding exemptions, waivers, and compensation.

Product:

- Potential emergency rule(s) or other effective methods.
- Present a summary report to the Board.
- Submit draft rules for Board consideration.

Objective 6: Provide timely internal and external information

Actions:

- Develop and schedule for internal and external education for employees and customers on Measure 37 implementation.
- Work with public affairs to develop a plan to communicate with target audience.

Products:

- Training sessions.
- Communications plan.

Research and Information Gathering

Objective 1:

1. As part of the ad hoc committee process, relevant research and information will be gathered and presented to the group to inform their discussions.
2. Periodic updates will be presented to the Board on the committee's progress.

Objectives 2 and 3:

1. Incorporation of DAS and DOJ recommendations and interpretations into agency procedures and policy.
2. Determination of database elements needed for excessive processing and tracking of claims.
3. Background papers on decision points.

Objective 4:

1. Matrix of historical statute and rule adoption and amendment.
2. Updated general file system.
3. Assessment of workforce needs.

Objective 5:

1. Assessment of rule need.

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2. Compilation of interested party inputs.

Objective 6:

1. Education plan based on assessment of internal and external training needs.
2. Target audience assessment for training and communication.

Policy or Alternative Development Process

1. Ad hoc committee recommendations to the Board on legislative, rule, or policy changes.
2. Incorporation of DAS and DOJ recommendations and interpretations into agency rule recommendations.
3. Issue and decision papers on decision points.
4. Proposal of alternative sources of past statutes and rules.
5. Property valuation alternatives assessment.
6. Recommendations in Board agenda items.
7. Advisory committee input for permanent rulemaking.

Recommendation/Policymaking

1. Board policy decisions where multiple legal options exist
2. Adoption of emergency rules and approval to proceed with permanent rules to implement Measure 37 and protect resources

Time Frame

The time frame for this work plan will extend from January 2005 (preparation) through March 2005 (draft presented to the Board). Upon Board approval, implementation of the work plan through 2005-06 until completion or the need for modification.

Milestones:

- Department of Justice decisions on Ballot Measure 37 legal issues (February or March 2005).
- Court actions (June 2005 -- ?)
- Possible Legislative action (March 2005 -- ?)

Monitoring/Continuous improvement:

Objectives 2 thru 5:

The Board will receive periodic progress reports as the Plan is implemented.

Project 2: ORS 527.714 Draft Work Plan

Goal

Review the intent and application of ORS 527.714 – types of rules, procedures; findings necessary; rule analysis – in developing rule concepts and adopting rules for the Oregon Forest Practices Act. Recommendations will be in the form of the development of guidance, procedures, directives, administrative rules or proposed statutory improvements but within the context of keeping to the overall intent of ORS 527.714.

Objectives

1. Discuss the Board's decision space under each of the elements of ORS 527.714 and have the Department of Justice provide a summary of the issue.
2. Review the current application of ORS 527.714 with respect to water protection rule concepts #4 (wood from debris flows and landslides), #7 (large wood placement) and #8 (basal area target increase for medium and small Type F (fish bearing streams), as well as in the application of ORS 527.714(7) for rule concept #3 (riparian management areas above fish barriers) of the proposed water protection rule package.
3. Discuss the issue of developing standards for analysis and findings for ORS 527.714 for Type "c" rules (i.e., rules that set standards for forest practices).
4. Road-test the sequential decision model application of ORS 527.714 with respect to water protection rule concept #12 (small type N streams).
5. Identify any needed changes either in guidance, administrative rule or statute for ORS 527.714 provisions.

Background

ORS establishes types of rules (procedural, definitional and rules that set standards for forest practices) as well as necessary findings, analysis and procedures for adopting rules. The previous applications of ORS 527.714 are as follows:

- 1996 – Pesticide Application Rules – Untreated Buffers Along Streams (Oregon Administrative Rules (OAR) 629-620-400 (7)).
- 2002 – Landslide and Public Safety rules (Oregon Administrative Rules (OAR) 629-623-0000 through OAR 629-623-0800).
- 2002 – Road Drainage and Wet Season Road Use rules (OAR 629-625-0600(9) and OAR 629-625-0700).

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The Board has delayed consideration of a completed ORS 527.714 analysis for water protection rule concepts #3 (economic analysis only), #4, #7, and #8. Such consideration will depend in part of the Board's completion of the Regulatory Regime work plan components for Measure 37, ORS 527.765, as well as ORS 527.714.

Related Regulatory Regime Work plan Components

1. ORS 527.765 – The timetable for proceeding with the Board's consideration of the ORS 527.714 findings and analysis for rule concepts #4, #7, and #8, as well as the cost analysis for rule concept #3, will depend on the timing and completion of this work plan component. Similarly, it is being proposed that a sequential decision model application of ORS 527.714 be the mechanism for conducting the planned review and re-draft of rule concept #12.
2. Ballot Measure 37 – An examination of the effectiveness of ORS 527.714 and possible alternatives is not impacted by Ballot Measure 37, and the Board can proceed at will. Policy implications arising from the implementation of Ballot Measure 37 may, however, point to changes or improvements in how the policy alternatives (i.e., consideration on voluntary alternatives) and the cost analysis components of ORS 527.714 are conducted. The effectiveness of adopting a regulatory rule versus a voluntary alternative needs to be evaluated in light of Measure 37. Further, the macro-economic impact analysis may need to account for the availability and occurrence of waivers to the application of the proposed rule pursuant to Measure 37.

Issues Identification

1. *Decision Space* – The Board needs to develop an understanding of the degree of decision latitude with respect to adopting findings and accepting information developed pursuant to ORS 527.714.
2. *Standards of Analysis* – To what extent does the Board want to develop guidance, set expectations or set standards for conducting scientific review and conducting analyses in adopting findings made pursuant to ORS 527.714(5)(a) – findings of fact with regard to degradation of resources – and ORS 527.714(5)(c) – findings that the proposed rule reflects available scientific information. Similarly, what are the Board's standards or expectation for the consideration of policy alternatives to rule, in demonstrating a proposed rule is least burdensome to landowners and timber owners per ORS 527.714(5)(e) and is proportional to the degree that which existing practices are contributing to the resource concern per ORS 527.714(5)(f). In both cases, is there flexibility to accept different standards for different rule considerations based on the proposed rule's complexity, impact, or landowner cost?
3. *Sequential Decision Process* – Previous applications of ORS 527.714 have been in a "packaged" format later in the rule making process. Similarly, the pending consideration for water protection rule concepts #3 (economic analysis only), #4, #7, and #8, is an application completed by staff that was also done in the "packaged" format. The "packaged" format means that while much of the underlying work was done sequentially over time, the Board is only asked to take action on the entire ORS 527.714 findings and analysis package in a single

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motion either immediately prior or concurrent with formal rule adoption. An alternative approach would be adopt a sequential decision process that explicitly recognizes ORS 527.714 as a sequential process – a decision flow chart if you will – where the Board formally makes determinations at each step called for in the findings and analysis. For example, when a resource concern is identified, the Board formally conducts an investigation and makes scientific findings pursuant to ORS 527.714(5)(a) (and perhaps ORS 527.714(5)(c) concurrently) prior to any decision about moving forward with developing rule concepts or voluntary alternatives. With this approach, the Board waits for the decision outcomes of the first steps before proceeding with the next steps.

Research and Information Gathering

The Board of Forestry will be provided with the following information as a result of this work plan:

Objectives 1: Discuss the Board's decision space under each of the elements of ORS 527.714 and have the Department of Justice provide a summary of the issue.

1. Ian Whitlock, the Department of Justice contact attorney, will prepare a white paper addressing the legal considerations related to the decision-space the Board has under each of the elements of ORS 527.714.
2. Clarify the decision-space the Board has under each of the elements of ORS 527.714.

Objectives 2 and 3: Review pending applications to understand and discuss ORS 527.714

1. Review of the pending application of ORS 527.714 to rule concepts #4, #7 and #8 and the economic analysis of rule concept #3 in a non-decision workshop format.
2. Invited and other testimony from a range of interests on ORS 527.714 applications.
3. If appropriate, present a final “packaged” ORS 527.714 findings and analysis for Board action.
4. Board Issue Paper documenting the experience and ideas for further investigation with respect to the standards for analysis and findings and the sequential decision process of completing steps of ORS 527.714 based on the review of how ORS 527.714 was applied for water protection rule concepts #4, #7 and #8 and the economic analysis of rule concept #3.

Objective 4: Road test sequential decision model application of ORS 527.714

1. Road test sequential application of ORS 527.714 with respect to water protection rule concept #12 (small type N streams) and present findings and analysis either for Board decision under current statute or for board discussion and review for the purpose of developing proposed changes either in guidance, administrative rule, or statute for ORS 527.714 provisions.

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Objective 5: Recommend changes (if any) to provisions of ORS 527.714

1. Updated Board Issue Paper on ORS 527.714 applications based on the road test of ORS 527.714 for water protection rule concept #12.
2. Invited and other testimony from a range of interests on ORS 527.714 applications.
3. Board Position Paper outlining recommended changes (if any) to guidance, administrative rule or statute for ORS 527.714 provisions including necessary draft legislative concepts for recommended statutory changes.

Time Frame

The time frame for the ORS 527.714 component of the Regulatory Regime work plan is from May 2005 through June 2006.

Milestones

1. May/June 2005
 - DOJ white paper addressing the legal considerations related to the decision-space the Board has under each of the elements of ORS 527.714.
 - Workshop on the decision-space under each of the elements of ORS 527.714, and on pending applications to rule concepts #4, #7 and #8 and the economic analysis of rule concept #3.
2. August 2005
 - Board Issue Paper (DRAFT) on ORS 527.714.
 - Staff Background Paper on rule concept #12.
 - Draft staff work plan for ORS 527.714 analysis of rule concept #12 (sequential decision model).
3. September 2005
 - Present DRAFT issue paper, background paper and work plan for sequential decision model application.
 - Testimony from landowners, agencies and interested parties.
4. November 2005
 - Presentation, review, and discussion of ORS 527.714(5)(a) – findings of resource degradation and ORS 527.714(5)(c) – findings that the proposed rule reflects available scientific information for rule concept #12.
5. January 2006
 - Presentation, review, and discussion of ORS 527.714(5)(d) (draft rule or voluntary concept), ORS 527.714(e)

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(analysis of availability, effectiveness and feasibility including least burdensome analysis) and ORS 527.714(f) (benefits to the resource and proportionality analysis) for rule concept #12.

6. March 2006

- Presentation, review, and discussion of ORS 527.714(7) (economic impact and cost analysis) for rule concept #12.

7. April 2006

- Updated Board Issue Paper (DRAFT) on ORS 527.714
- Board Position Paper (DRAFT) on ORS 527.714 containing recommendations and alternatives to recommendations for changes in to guidance, administrative rule or statute for ORS 527.714 provisions.
- Draft legislative concepts for proposed statutory changes.

8. May 2006

- Presentation and Board Action on issue paper, position paper and recommendations changes in to guidance, administrative rule or statute (i.e., acceptance of legislative concepts) for ORS 527.714 provisions.

Project 3: 2003 House Bill 3264

The work plan for Project 3 was presented to the Board and approved at the October 2004 meeting in Tillamook.

Work Plan Status Report

The Department has developed initial drafts of the five issue papers identified in the work plan:

1. Written plan/Prior approval – complete submitted for internal review
2. Written plan content – complete, in staff review
3. Standards – first draft complete, in staff review
4. Rule revision – first draft complete
5. Alternate practices – first draft complete

All issue papers are scheduled to be completed by mid February.

As the papers are completed they will be made available for review as follows:

- Staff review – P&CF staff
- Internal review – P&CF Management then Field review
- External review – Advisory committee review

After review, edits will be made to the papers as necessary and prepared for inclusion in the Board of Forestry agenda for presentation at the April meeting.

**Project 4.a.: Proposed Changes to the Water Protection Rules—
Regulatory Measures (Part of the draft ORS 527.765 Work Plan)**

Background

The Department has been working on a revised set of draft water protection rules and voluntary recommendations for the Board of Forestry to consider and adopt. These proposed changes are based on recommendations from the Forest Practices Advisory Committee and the Eastside Riparian Functions Advisory Committee, as well as the Independent Multidisciplinary Science Team that has scientific oversight of the Oregon Plan for Salmon and Watersheds and the water quality sufficiency analysis completed by the Department and the Department of Environmental Quality in 2002.

Rule concepts were first reviewed by the Board of Forestry on April 25, 2003, and June 4, 2003. The Board directed the Department to return with proposed rule language for each of the concepts. Through 2003 and 2004 the Board considered each concept. The Department reviewed the concepts with the Regional Forest Practices Committees, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, and other interested parties. The Board has considered comment from these and other sources. By July 2004, the Board had completed its initial determinations on each of the concepts. Current deliberations are now considering the recommendations of the committees, as well as addressing new information that has come to light as a result of monitoring and research work that has been completed.

The Board has given approval for rule development for rule concepts #1 and #18:

- Rule Concept #1 Clarify Water Protection Rules policy statement: Revise OAR 629-635-0100; add OAR 629-605-0103 as a link to Oregon Plan voluntary measures.
- Rule Concept #18 Small Type N stream monitoring: Retain OAR 629-635-0110; Remove obsolete references

The Board directed that these two concepts move forward as rule changes. This concept involves no changes in forest practice standards, so the findings and economic analysis described in ORS 527.714 are not required.

For the following four concepts, the Board gave initial acceptance to the findings required by ORS 527.714 and directed the Department to complete the economic analysis also required by that statute.

- Rule Concept # 3 Riparian management areas above fish barriers: Revise OAR 629-635-0200
- Rule Concept #4 Wood from debris flows and landslides: Add OAR 629-640-0210

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- Rule Concept #7 Large wood placement: Revise OAR 629-640-0110
- Rule Concept #8 Basal area target increase for medium and small Type F streams (western Oregon only): Revise OAR 629-640-0100 (6), including Tables 2 and 3; revise OAR 629-640-0100(7) and 629-640-0100(11)

The Department is preparing the findings and economic analysis required by ORS 527.714. Board review of this material was scheduled the January 2005 Board meeting, with the potential for rulemaking to follow. The schedule had been to complete the analysis portion of the riparian rule project before resolving other broad policy issues such as how to determine appropriate resource protection in the context of dynamic ecosystems. However, uncertainties related to the passage of Measure 37 led the Board to postpone review of the economic analysis to a later date. The Department of Forestry and Oregon Department of Justice are analyzing the potential effects of the measure; the results of this analysis could affect the Board's decision whether or how to proceed with these proposed rules. The Board's planned review of how to apply ORS 527.714 could also affect the progress of the proposed riparian rules.

The Board deferred action on Rule Concept #12, directing the Department to continue working with landowners, technical specialists, agencies, and other interested parties to develop a satisfactory measure. The Department is developing this concept, but has not arrived at a proposal that is ready for Board examination.

- Rule Concept #12 Small Type N streams (western Oregon only): Revise OAR 629-640-0200 (5)

Additionally, the Department of Environmental Quality (DEQ) has made a request that the Forest Practices Act (FPA) rules be directly linked to TMDL rules (DEQ/ODF September 24, 2004, Memorandum to the Environmental Quality Commission and Board of Forestry). To help move towards a resolution of these issues, the Department held a "Forest practices and water quality workshop" for the Board in September 2004 and a joint meeting with the Environmental Quality Commission in October 2004 to review and discuss forest practices and water quality issues.

Issues Identification

1. "*Maximum Extent Practicable*" Threshold – ORS 527.765 requires that the Board "establish best management practices and other rules applying to forest practices as necessary to insure that to the *maximum extent practicable* nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards." The Board does not currently have rules or guidance on procedures for evaluating when the maximum extent practicable threshold has been met in establishing best management practices. Having clarification on how to determine when this threshold is met is a key part of making determinations on potential rule changes to meet water quality standards.

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2. *Knowledge of the Riparian Rule Process to Date* – More than five years have passed since the Board began reviewing the forest practice rules as part of the Oregon Plan for Salmon and Watersheds. Typical turnover in Board membership has occurred in that period. In order to continue deliberations, Board members need to be familiar with the origins and progress of the proposed rule package.
3. *Decision on Rule Concepts #1 and #18* – These concepts were not controversial when previously reviewed by the Board. Should this proposed rule revision be enacted on its own, held to go with other rules that might be enacted, or dropped?
4. *Decision on the proposed rule revisions in Concepts #3, 4, 7, and 8* – How should the Board respond to the various changes in statute and information that have occurred in the last several years?
 - a. *Measure 37 Effects* – The effects of the measure are uncertain. The Governor’s office is working with the Oregon Department of Justice to clarify the state’s position. In addition, the Oregon Legislature may make changes. Changes to riparian rule standards could potentially allow a large number of claims. The measure could influence decisions whether to enact rules and it could affect costs identified in the findings and economic analysis required by ORS 527.714
 - b. *New Information* – Landowners and others have suggested that with salmon returns at higher levels than those recorded in 1997, there may not be a problem requiring an urgent response; costs to landowners from proposed rule revisions may not be justified. In addition, some have suggested that a review of recent studies on the stream temperature dynamics of small headwater streams (small Type N) may lead to different conclusions.
 - c. *ORS 527.714 Analysis* – The Board plans to review how to work within ORS 527.714 when considering rulemaking. The results of that review could affect the Board’s decision on whether to proceed with proposed riparian rule changes.
 - d. *Water Quality Standards* – Should the Board proceed with the riparian rule package before completing discussions with the Environmental Quality Council and the Department of Environmental Quality on water quality standards? In addition, some have suggested that a review of studies on the relationship between stream temperature and fish productivity—and the implications for protecting beneficial uses—may lead to a reconsideration of some rule concepts. The Board also, plans to review the decision space around the *maximum extent practicable* threshold under ORS 527.765 when considering rulemaking. The results of that review could affect the Board’s decision on whether to proceed with proposed riparian rule changes.
 - e. *Protection in the Context of Dynamic Ecosystems* – Should the Board proceed with the riparian rule package before completing this broad policy discussion?
5. *Decision on Rule Concept # 12* – Should the Department continue the joint effort with landowners and other agencies to develop a viable proposal for rule Concept #12? Many of the factors listed in 4.a. through 4.d. above would also apply to this discussion.

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6. *Decision on the FPA/TMDL linkage* – The Department of Environmental Quality has requested that the FPA include specific reference to water quality load allocations developed by TMDLs. This reference would specify that in order to demonstrate the FPA is meeting water quality standards, it would need to be demonstrated that TMDL load allocations are met.

Overview of Action/Products Needed

Objective 1: Review the application of “maximum extent practicable” (MEP) under ORS 527.765, and determine the need for rules and/or guidance on procedures for evaluating when the MEP threshold has been met in establishing best management practices.

Objective 2: The Department will develop a review of the origins and current status of the proposed riparian rule revisions, to be presented at the June 8, 2005 Board meeting.

Objective 3: The Department will develop a separate issue paper for each of issues 1 through 5 above. The Department plans to present the issue papers to the Board at its June 8, 2005 Board meeting. The Department expects discussions on issue 3 to be short and not controversial. The other issues will likely be subject to more scrutiny and require more consideration.

Objective 4: In collaboration with the DEQ and DOJ, review the pros and cons of creating a link between the FPA and TMDL load allocations and make a recommendation to the Board on how to proceed on the issue.

Research and Information Gathering; Policy or Alternative Development Process

To prepare the issue papers described in this work plan, the Department will gather information as follows:

Objective 1: Ian Whitlock, the Department of Justice contact attorney, will prepare a white paper addressing the legal considerations related to the application of “maximum extent practicable” (MEP) under ORS 527.765.

Objective 2: The Department will use existing information to prepare a review of the riparian rule revision project to date.

Objective 3: The Department has gathered and presented to the Board much information and input in the process of developing and refining proposed rule revisions. To develop recommendations in the issue papers, the Department will:

- Review available science and monitoring information to determine if there is new information that will help inform the Board’s decisions.
- Continue to consult with the landowner and operator communities, technical specialists, other agencies, and other interested parties.

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Objective 4: The Department will develop an issue paper in collaboration with DEQ and DOJ about the issues around creating a link between the FPA and TMDL load allocations. The issue paper will include the Department's recommendations to the Board on how to proceed on the issue.

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Recommendation/Polycymaking

1. Clarify the application of “maximum extent practicable” (MEP) under ORS 527.765 and recommend rule and/or guidance for evaluating when the MEP threshold has been met in establishing best management practices.
2. The Department will recommend to the Board one of the following choices in each rule-revision issue papers developed under this work plan:
 - Continue with the rule revision process as previously planned, but with a new schedule;
 - Continue with the rule revision process taking into account the various factors that have recently paused the effort, e.g., Measure 37; or
 - End the revision process by stating that the proposal should not go into rule. This choice could involve converting some rule proposals to voluntary measures.

Time Frame

The time frame for this work plan begins in June 2005. The closing date for the process would be variable, depending on the Board’s decision on each issue. If the Board determines that rulemaking is to result for Concepts #3, 4, 7, 8, or 12 it would need to review the Department report on the findings and economic analysis required by ORS 527.714. The Department estimates that rulemaking would be complete in the first quarter of 2006.

Milestones

- June 2005 -- Staff presents DOJ white paper on the application of “maximum extent practicable” under ORS 527.765.
-- Staff issue papers on rule revisions presented to the Board.
-- Board makes decisions on Department recommendations.

The following additional milestones are expected if the Board proceeds with rulemaking:

- July 2005 -- Board reviews the Department’s recommendations on the FPA/TMDL linkage issue.
-- Board reviews findings and economic analysis (when required).
- Sept. 2005 -- Board approves of complete draft rule package for public comment
-- Board begins public comment period.
- Jan. 2006 -- Board reviews public comment.
-- Board may direct the Department to revise proposed rules.
- March 2006 -- Board enacts rules.

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Monitoring/Continuous Improvement

The Department has no plans for monitoring or continuous improvement strictly related to proposed revisions of the proposed riparian rules. As resources permit, the Department will continue with field monitoring (for compliance and effectiveness) of the existing Water Protection Rules.

Related Regulatory Regime Workplan Components

1. Measure 37 – Decisions on how to deal with rulemaking and cost analysis could be strongly affected by the measure.
2. ORS 527.714 – Policy and guidance decisions on how to work within ORS 527.714 could influence Board decisions on what do with the proposed revisions to the riparian rules.

**Project 4. b.: Proposed Changes to the Water Protection Rules—
Voluntary Measures (Part of the draft ORS 527.765 Work Plan)**

Background

Board deliberations on riparian concepts have resulted in sorting what must become rule from what might be a voluntary action. When ORS 527.714 findings cannot be established, yet an activity seems likely to have benefits, an *Oregon Plan* voluntary action may be developed in lieu of a rule until monitoring or research can be conducted to provide more definitive information on rule effectiveness. By choosing *Oregon Plan* voluntary measures, landowners are, in some cases, providing the opportunity to test the assumption(s) that the work will result in benefits for fish and water quality. As the Board brings closure to the riparian concept deliberation, it is time for the voluntary component of the *Oregon Plan* work plan to be revisited.

Issues Identification

The current *Oregon Plan* Work Plan includes strategies and actions for both private and state owned forests in one Department work plan. However, a number of changes have occurred since the *Oregon Plan* work plan was adopted in June 2000. The Private and Community Forest Program merged what were the Forestry Assistance Program and Forest Practices Program. State Forest Management Plans now seamlessly integrates *Oregon Plan* objectives into their strategies and actions, rendering the existing work plan out-dated or at best redundant. Separate work plans for privately managed forests and state managed forests will better reflect the unique contributions of these land managers contributions to the *Oregon Plan*.

Overview of Action/Products Needed

1. *Develop voluntary strategies and actions that private forest land managers have chosen to represent their unique role in the Oregon Plan.*

Voluntary actions are implemented at the discretion of the landowner applied on a site specific basis consistent with the landowner's management objectives.

Volunteerism is successful when actions make sense to landowners, flexibility exists to apply actions on a site specific basis, and incentives and training necessary to implement the actions are in place. *Objective 1* can be accomplished through the work of an ad hoc committee represented by private forest landowners, assisted by the agencies and organizations that provide forest management support.

At a minimum the committee should include representatives of:

Oregon Small Woodlands Association
Oregon Forest Industries Council

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Oregon Forest Resources Institute
 Associated Oregon Loggers
 Oregon Department of Forestry
 Oregon Department of Environmental Quality
 Oregon Department of Fish and Wildlife
 Oregon State University Extension Service
 Oregon Watershed Enhancement Board

The charge to the committee will be to:

- a. Develop *Oregon Plan* strategies and actions to reflect their voluntary contribution. Committee work should specifically consider, but not be limited to, rule concepts the Board has approved for a voluntary pathway:

Rule Concept	<i>General Description</i>
2	<i>Use Type F prescriptions for large and medium Type N streams</i>
5	<i>Channel migration zones</i>
9	<i>60% basal area cap</i>
10	<i>No harvest within 1/2 riparian management area</i>
11	<i>Retain largest trees within riparian management area</i>
17	<i>Fish habitat incentives</i>

Existing voluntary actions should be updated to reflect current scientific knowledge and modified to clarify objectives.

- b. Consult a wide variety of stakeholders to scrutinize the plan and provide input for consideration.
- c. Present the plan to the Board of Forestry, GNRO, and Legislative Committees for endorsement.
- d. Present the plan to the Oregon Environmental Quality Commission, Fish and Wildlife Commission, and Watershed Enhancement Board to request their continued support.
- e. Assist with communicating the plan statewide to private forest landowners.

Product: *Oregon Plan Voluntary Work Plan*

- 2. *Develop incentives that support the private forestland managers to implement monitor, and report Oregon Plan actions.*

Three areas of concern will be addressed: 1) Regulated landowners are treated differently than non-regulated landowners when funding decisions are made; 2) state and federal removal fill permits do not allow the use of the incentive for placing large wood which is detailed in the FPA; and 3) the need to more fully understand what are true incentives for the diverse group of private forest land managers.

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Products:

- ODF OWEB MOA and revised statute that speaks to addressing the funding needs of the non-industrial forest landowner regardless of FPA requirements.
 - Private and Community Forests Program Incentives
 - Landowner and agency (state and federal) endorsed incentive for the active placement of large wood.
3. *Develop a training program to facilitate the implementation of Oregon Plan actions including identification of opportunities, planning, implementing, monitoring, and reporting.*

The Private and Community Forests Program, Associated Oregon Loggers, and OSU Extension Service currently provide training for stewardship foresters and private forest land managers. When the new Oregon Plan strategies and actions have been completed and endorsed by the Board, it will be necessary to communicate the work plan to private forest land managers who wish to implement *Oregon Plan* actions as part of their overall management strategy.

An *Oregon Plan* Communications Plan and Training Module will be developed by a small work team (ODF, OSU, OFIC, and AOL) that covers, but is not limited to, the following topics:

- *Oregon Plan* strategies and actions
- How to identify what projects are needed on their watersheds
- Where to get technical assistance
- How to obtain funding for projects including how to write grants
- Permits
- Advantages of partnerships
- Technical training on Oregon Plan actions
- How to monitor
- How to report

Product Oregon Plan Training Module and Communications Plan

4. *Measure progress towards achieving Oregon Plan strategies and actions through the selection and use of relevant sustainable forest management indicators consistent with Private and Community Forests and Oregon Plan monitoring programs.*

Monitoring is essential to learn if voluntary actions are achieving the desired results. Landowners investing in *Oregon Plan* projects will want to know that their time and money have been well spent. There are two mutually beneficial components: ODF Monitoring and Landowner monitoring. OWEB also conducts monitoring of Oregon Plan projects which provides an objective view that lends credibility to our assessment work.

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To date, ODF monitoring and research efforts have focused primarily on the environmental aspects of Oregon Plan projects. It is now time to expand the scope to include monitoring of the economic and social aspects of the Oregon Plan goals of under the *Forestry Plan for Oregon* related to voluntary activities and the Oregon Plan can be achieved.

Products:

- Private and Community Forests Program Monitoring Strategy that fully addresses the monitoring of each *Oregon Plan* action.
 - Oregon Plan Voluntary Work Plan and Training Module will describe landowner monitoring.
 - Joint OWEB, DEQ, ODFW, and ODF presentation to respective Boards and Commissions on how Oregon Plan monitoring is conducted and how we can best compliment our work.
 - Monitoring strategy developed with the Institute for Natural Resources, OSU, OWEB, and ODF (and others) to conduct studies of the economic and social aspects of the *Oregon Plan*.
5. *Use indicators, other assessment and accomplishment information, and stakeholder involvement as adaptive management tools for current Oregon Plan implementation and as a basis for development of ongoing modification to the Oregon Plan privately managed forestlands voluntary work plan.*

Products:

- *Oregon Plan* Voluntary Work Plan will include an adaptive management approach.
- Intra-agency Work Plan and Memorandum of Agreement for conducting coho-like studies throughout Oregon Plan ESUs.

Recommendation/Polycymaking

Potential decision ranges for this work plan include:

1. Adoption, modification and adoption, or rejection of the *Oregon Plan* Work Plan and sub-components: Communications Plan, Training Module and Monitoring Strategy.
2. Adoption, modification and adoption, or rejection of the *Oregon Plan* Work Plan. Consideration and approval for seeking additional budget resources or partnerships where needed to:
 - Update the Guide to Placing Large Wood (OWEB has verbally given the nod that seeking OWEB funds for this type of project would be acceptable.)
 - Provide resources needed to conduct coho-like studies in Oregon Plan ESUs.

Milestones

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1. March 2005:
 - Present draft work plan to the Board.

2. September 2005
 - Voluntary plan completed and approved by the Board.
 - Board consideration of a proposed *Oregon Plan* Voluntary Work Communication Plan.

3. January 2006
 - Silvicultural exemption includes removal fill activities.
 - Annual P&CFP Research and Monitoring Presentation.

Monitoring/Continuous Improvement

The work plan will be reviewed by an ad hoc committee on an annual basis. Feedback will be provided through annual presentation to Board about Oregon Plan accomplishments, revised work plan as needed to reflect new scientific knowledge, monitoring results, and a private forest land manager report on what was found to be effective and barriers to the implementation of *Oregon Plan* projects identified.

Project 5: 2003 House Bill 3616 Rule Development

The work plan for Project 5 was presented to the Board and approved at the January 2005 Meeting in Salem.

Stewardship Agreements Status Report

The Department has begun implementing the work plan approved by the Board on Jan 5, 2005.

The initial step includes working with the Department of Agriculture and Defenders of Wildlife staffs to establish responsibilities and membership for a steering and a rule advisory committee.

The rule advisory committee will have broad representation and will assist in shaping a program by providing general direction and feedback on various strategies developed by the steering committee.

The steering committee, with 5 to 10 members, will gather detailed information and develop specific options and language for advisory committee consideration.

Letters inviting participation will be sent to the 25 organizations and agencies that made up the Conservation Incentives Work Group, plus additional groups, organizations, or agencies ODF, ODA, or ODFW identify as having an interest in shaping Stewardship Agreements.

Project 6: Special Resources on Forest Lands

Goal

Design and implement program to promote legal and policy mandates related to the inventory and protection of special resources and forest lands.

Objectives

1. Evaluate the policy implications from Ballot Measure 37.
2. Review and update protection requirements for special resources on forest lands as set forth in ORS 527.710 and OAR 629-680-100.
3. Expand specified resource site monitoring and reporting.

Background

The Board has responsibility to collect and analyze the best available information and establish inventories of resource sites needing protection. Furthermore, the Board must determine whether forest practices conflict with such resource sites, and must consider the consequences of the conflicting uses and determine appropriate levels of protection.

OAR 629, Division 680 defines the Board's process to set criteria to inventory and protect special resources on forest lands. These rules address how the Board identifies these resources, how the Board determines whether forest practices conflict with the resources, and how the resources are to be protected. Special resource sites include:

- Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973, as amended;
- Sensitive bird nesting, roosting, and watering sites;
- Biological sites that are ecologically and scientifically significant; and
- Significant wetlands on forest lands.

Actions which will contribute to the conservation of diverse native plant and animal populations and their habitats in Oregon's forests (Strategy E) is one of seven key elements of the FPFO the Board wants to achieve over the next eight years. These strategies provide a framework for establishing actions and for designing and implementing agency programs.

Issue Identification

1. Ballot Measure (BM) 37, passed in the 2004 election, created allowances for private landowners to seek waiver of regulation or compensation when an existing land use

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regulation results in a reduction of fair market value of their property. BM 37 has significant implications to issues related to the protection of special resources on forest lands. Evaluation and revision of protection measures must take into account the likelihood of compensation claims.

2. House Bill (HB) 3264 eliminated the State Forester's authority to require "prior approvals" and "approval" of written plans. The written plan approval process was the primary mechanism used to design resource protection measures for specified resource sites. In revising the specified site rules to conform to HB 3264, options range from adopting existing guidance as administrative rule to deferring to direct enforcement of the federal Endangered Species Act by the federal agencies.
3. The Board is currently vulnerable to legal petition since the policies and procedures as set forth in ORS 527.710 (3) and OAR 629-680-100 to protect threatened and endangered species have not been completed. When a species is listed as threatened or endangered by state or federal authorities, the Board is required to adopt rules to protect resource sites that are used by those species and that are sensitive to forest practices. The peregrine falcon, northern spotted owl, and marbled murrelet are currently listed as threatened or endangered species by the Oregon Fish and Wildlife Commission or U.S. Fish and Wildlife Service (USFWS).
4. Significant wetlands protection: Currently, protection standards are based solely on size without regard to wetland functions and values. Wetlands with low habitat values that are primarily used for grazing livestock have the same protection standards as a cattail marsh or forested wetland that has high wildlife habitat values. A classification system that matches the physical characteristics and beneficial uses to appropriate protection measures may be more appropriate.

Overview of Actions/Products Needed

Objective 1: Evaluate the policy implications from Ballot Measure 37.

Action A: Evaluate analysis and recommendations from the Attorney General's office regarding the application of exceptions contained in Ballot Measure 37 and determine whether special resources related to endangered species should continue to be addressed through Forest Practices administrative rules.

Product: Issue paper evaluating options for protection of special resource sites potentially including statutory amendments to include provisions for compensation or to eliminate any requirement to address special resource sites under the Forest Practices Act.

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Objective 2: Review and update protection requirements as set forth in ORS 527.710 and OAR 629-680-100.

Action A: A *Northern Spotted Owl Taskforce* should assist Board evaluation of the northern spotted owl and forest practices.

Product: Technical review paper evaluating compliance and effectiveness of the applied interim requirements for northern spotted owl nesting sites (OAR 629-665-0210), and if warranted, revised protection requirements and exceptions criteria for the northern spotted owl replacing the current interim requirements.

Action B: A *Marbled Murrelet Advisory Taskforce* should assist Board evaluation of the marbled murrelet and forest practices.

Product: Technical review paper and, if warranted, protection requirements and exceptions criteria for the marbled murrelet.

Action C: A *Peregrine Falcon Advisory Taskforce* should be assist Board evaluation of the peregrine falcon and forest practices.

Product: Technical review paper and, if warranted, protection requirements and exceptions criteria for the Peregrine Falcon.

Action D: A *Significant Wetland Advisory Taskforce* should assist Board evaluation of significant wetland protection standards.

Product: Technical review paper, and, if warranted, revised protection requirements and exceptions criteria for significant wetlands.

Objective 3: Expand specified resource site monitoring and reporting.

Action A: Report on the number and types of operations conducted near resources sites as set forth in OAR 629-680-030.

Product: Report to the Board.

Action C: Evaluate compliance and effectiveness for other specified resource site rules.

Product: Report to the Board.

Recommendation/Policy Making

Time Frame

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The time frame for this project will extend well beyond 2005. It is intended work regarding the northern spotted owl technical review will be initiated in 2005.

Records Format:

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Director

Approved by Stephen Hobbs, Chair

Maintained by Gayle Birch, Board Support

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