

Date: February 16, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director
Subject: Agenda item F, Informational item: Director's dialogue
February 18-19, 2010 EQC meeting

Columbia River total dissolved gas and spill for fish passage annual report

In June 2009 the commission issued a new waiver to the federal government for spill years 2010 through 2014. The US Army Corps of Engineers submitted the annual report to DEQ Dec.21, 2009.

The total dissolved gas standard is 110 percent, and the waiver allowed 120 percent in the tailwater, the area downstream of the spilling dam, for the purpose of endangered species fish passage spill. The dams affected are Bonneville, The Dalles, John Day and McNary federal hydropower dams on the mainstem Columbia River. Columbia River flows were 85 percent of average.

The Army Corps of Engineers surpassed the waiver limits 36 times in 2009, due to the Corps' uncertainty when applying spill guidance criteria, inaccurate accounting for water travel time, degassing of total dissolved gas, water temperature effects, and spill gate patterns, as well as high runoff flows and flood control operations.

Juvenile salmon and trout monitoring for gas bubble trauma was conducted at Bonneville and McNary dams two days per week for the duration of the fish passage spill period, April 1 to August 31. The Corps examined 7,252 juvenile salmonids, and 21, or 0.3 percent, had gas bubble trauma.

Although the total dissolved gas levels exceeded the waiver limits, the biological monitoring indicated a low risk to out-migrating salmonids. DEQ finds that the US Army Corps of Engineers was within the total dissolved gas waiver limits issued by EQC. DEQ will continue to work with the Corps to reduce the number of waiver exceedances during the spill season.

Updates to turbidity standards

DEQ recently initiated the process for revising the water quality standard for turbidity. The first phase is underway and involves reviewing and updating a technical document regarding the effects of turbidity on aquatic life, recreational use and other beneficial uses of Oregon's waters.

We expect the technical review to be complete in April, after which it will undergo peer review from a panel of scientific experts to address specific technical areas of uncertainty. From June to September, DEQ will convene a stakeholder advisory group to discuss focused policy issues related to revising the standard for turbidity. DEQ anticipates proposing a rule in January 2011, with the goal of having a final rule submitted to the EQC for adoption by June 2011.

E-Cycles

The E-cycles program collected nearly 19 million pounds of e-waste statewide in 2009. This roughly translates into 52,000 pounds of computers, monitors and televisions collected each day. The environmental benefits of collecting 19 million pounds of e-waste is nearly 1.2 million pounds of lead was kept out of landfills and incinerators, and it prevented the release of greenhouse gases equivalent to the annual emissions of more than 34,000 cars.

Ambient benchmark concentrations rulemaking

DEQ plans to propose new ambient benchmark concentration standards in April to include ethyl benzene, change the values for lead and manganese, and clarify that mercury means only elemental mercury and not compounds. The benchmarks, along with emission measurements and estimates, help DEQ understand air toxics issues around Oregon and are essential for science-based air toxics solutions

Significant increase in federal air grant proposed

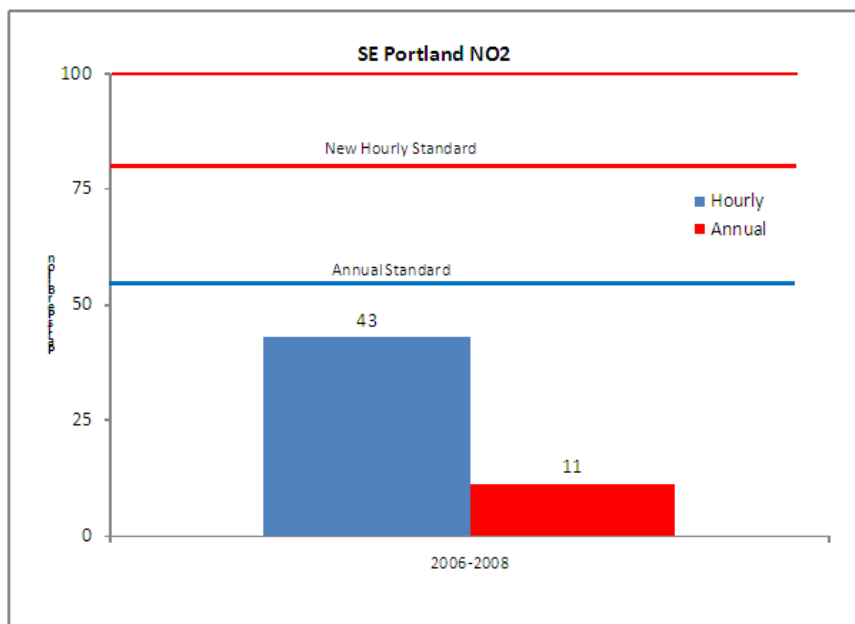
EPA's proposed budget for 2011 includes an increase of \$82.5 million for state and local air agencies, from \$226.6 million to \$309 million. EPA has not announced details for the funding, but has said that the additional money will fall into three project categories:

- \$15 million for monitoring;
- \$40 million for core programs; and
- \$25 million for greenhouse gas work.

EPA will likely distribute monitoring funds to state and local agencies based on new monitoring requirements related to revisions of the lead, sulfur dioxide and nitrogen dioxide standards. In the past, Oregon has received approximately 0.9 percent of core program funding, but EPA is considering a new allocation formula that could redirect funds to more populous states, particularly in the southeast. DEQ has no information on how EPA may allocate the greenhouse gas funds. Assuming that Congress approves the funding, DEQ expects an increase in federal funding in fiscal year 2011. While there are still significant unmet needs in core program funding nationally, this proposal is largest increase in federal air grant funding in many years. As co-chair of the Funding Committee for the National Association of Clean Air Agencies, DEQ's air quality administrator, Andy Ginsburg, played a role in this effort that will benefit air programs throughout the nation.

New federal air quality standard for nitrogen dioxide

On January 25, EPA finalized revisions to the nitrogen dioxide national ambient air quality standard, setting a new one-hour NO₂ standard at 100 parts per billion. EPA also is retaining, with no change, the current annual average NO₂ standard of 53 parts per billion. As shown in the graph below, areas with current monitoring in Oregon have not violated the new standard recently.



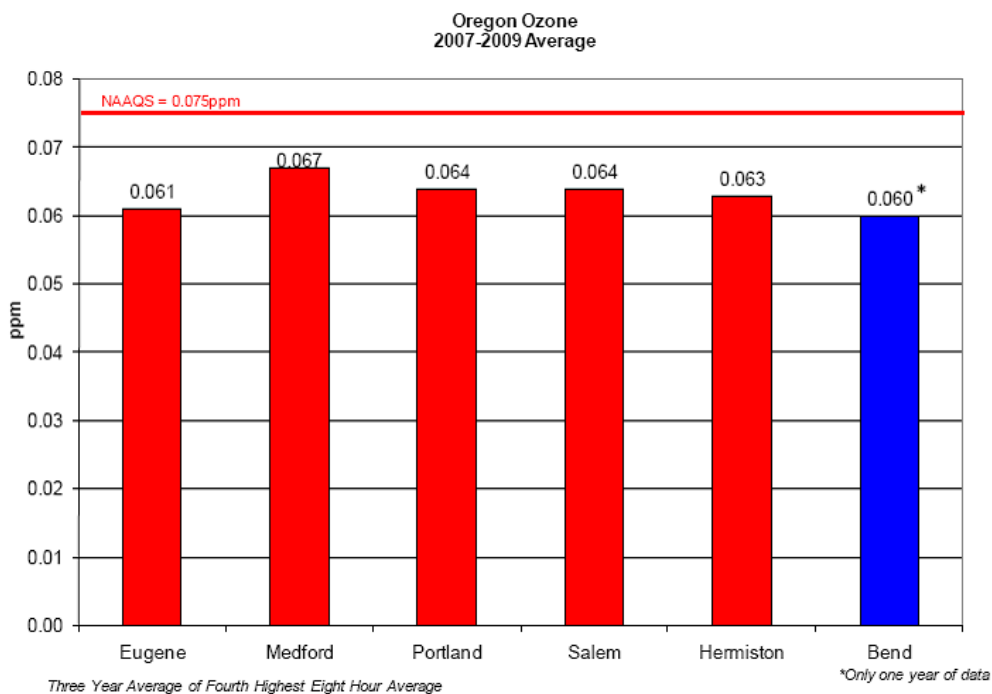
What is different is that EPA is establishing new ambient air monitoring requirements for NO₂, focusing on “hot spots” expected to have higher concentrations. In urban areas, monitors are required near major roads as well as in other locations where maximum concentrations are expected. Additional monitors are required in large urban areas to measure the highest concentrations of NO₂ that occur more broadly across communities. DEQ expects that two new monitors will be needed in the Portland area to meet these requirements, and expects that Portland will be closer to the standard in the future with the focus on monitoring in hot spots. All new NO₂ monitors must begin operating no later than January 1, 2013.

EPA expects to designate areas as attaining or not attaining the new standard by January 2012 based on the existing community-wide monitoring network. For areas without monitors, EPA anticipates designating them “unclassifiable” to reflect insufficient data available to determine if those areas are meeting the revised standard. Once the expanded network of NO₂ monitors is fully deployed and three years of air quality data have been collected, EPA intends to redesignate areas in 2016 or 2017, as appropriate, based on the air quality data from the new monitoring network.

Proposed new federal air quality standard for ozone

On Jan.7, 2010, EPA proposed revisions to the ozone, or smog, national ambient air quality standard, based on a reconsideration of the health data used to set the ozone standard in March 2008. Under EPA's proposal, the eight-hour primary standard would be tightened from 0.075 parts per million to somewhere within the range of 0.060 to 0.070 parts per million. This proposed range is consistent with the Clean Air Scientific Advisory Committee's recommendation to the previous administration. EPA estimates that, depending on where final standard is set, between 1,500 and 12,000 premature deaths could be avoided annually beginning in 2020. EPA has also proposed to amend the 2008 secondary ozone standard to a cumulative seasonal standard at a level within the range of seven to 15 parts per million-hours. EPA believes the current secondary standard, set in 2008 at a level identical to the primary standard, is not adequate to protect vegetation and forested ecosystems.

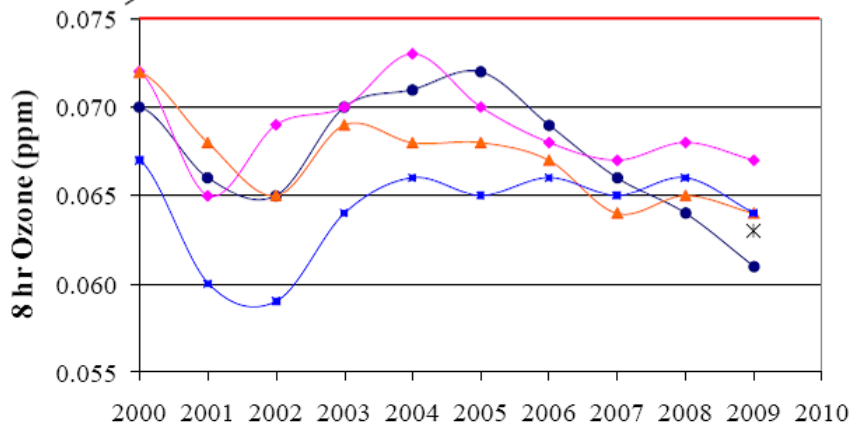
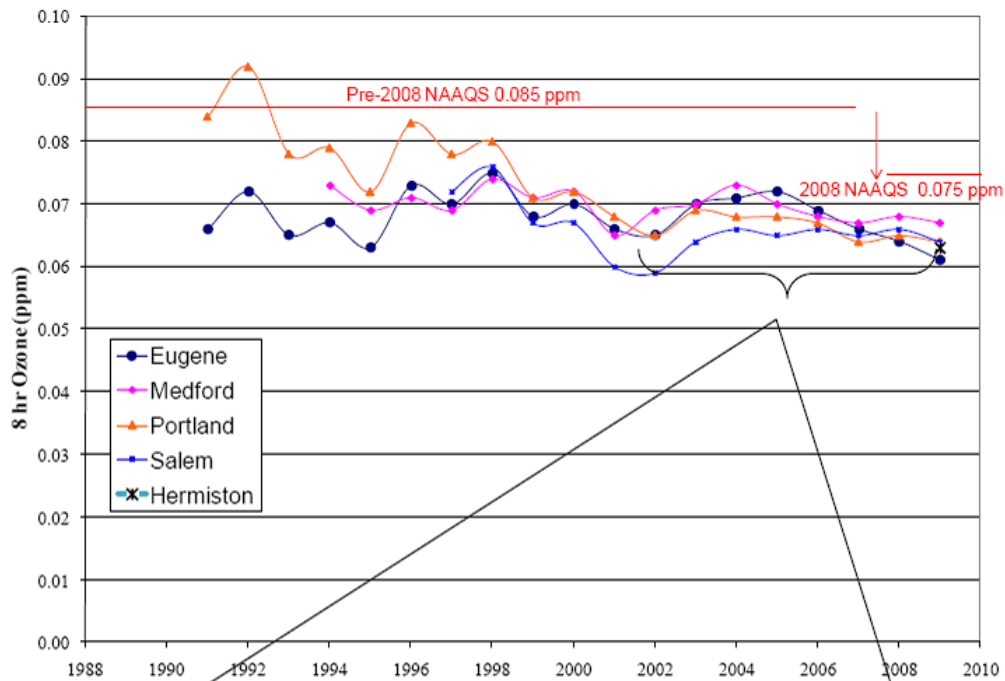
The effect of the proposal on Oregon could range from minor to major depending on the final standard. As shown on the graph below, all areas in Oregon are now meeting the existing standard of 0.075 parts per million using the most current three-year average data. No areas would violate a standard of 0.070 ppm, the Medford area would violate a standard of 0.065 ppm, and all areas currently monitored would violate a standard of 0.060 ppm.



The following graph shows a general improving trend in ozone levels in Oregon, but also illustrates how ozone levels vary with meteorological variation. As illustrated by the 2004 and 2005 values, additional areas in Oregon could violate a standard set at 0.065 or 0.070 parts per

million during hot and sunny periods.

2007-2009 Oregon Ozone Levels



Values are the three year average of the fourth highest eight hour average daily maximum from 2007 to 2009

With respect to implementation, EPA proposes an accelerated timeframe based on the signing of a final rule by Aug. 31, 2010. States must submit designation recommendations to EPA by January 2011, with final designations effective no later than August 2011. Attainment demonstration state implementation plans are due to EPA by December 2013 and attainment dates will range from 2014 to 2031, depending on the severity of the problem.

Greenhouse gas rulemakings

DEQ's greenhouse gas reporting and low carbon fuel standard advisory committees each held meetings in January. The greenhouse gas reporting committee continued discussions of reporting details for fuel and imported electricity. A key issue is the level of reporting within the distribution network; to minimize the number of reporting entities, DEQ would like reporting to be as high as possible. DEQ and subgroups of the committee will continue discussing this issue during February, and DEQ hopes the committee will be able to make a recommendation at its March meeting.

The low carbon fuel standard committee had robust discussion of several key issues, including methods for calculating low carbon fuel credits and deficits, the approach to setting the baseline standard for the program, and the phase-in of the compliance schedule. DEQ will extend the committee's timeline to allow for adequate review and discussion of important information, such as the economic analysis. The committee will complete its report, including a draft rule, by the end of 2010, and rulemaking will commence during 2011. DEQ also began discussions with representatives of the railroad industry regarding their concerns about biofuels in diesel used in locomotives.

DEQ staff continues to evaluate statute, rule, policy and funding changes that will be needed to implement federally-required permitting of greenhouse gas emission sources.

State Controller's Gold Star Certificate for fiscal year 2009

DEQ received the State Controller's Gold Star Certificate for fiscal year 2009. The State Controller's office awards the certificate to state agencies that provide accurate and complete fiscal year-end information in a timely manner. DEQ's ability to provide timely, accurate and complete information helps Oregon submit its comprehensive annual financial report to the federal government, and is one part of why Oregon has received a national certificate of achievement for excellence in financial reporting every year since 1992.

Deschutes area groundwater protection program

DEQ held a community meeting February 4 in La Pine to address concerns about potential groundwater contamination in southern Deschutes County and northern Klamath County. This meeting was a follow-up to a July 2009 meeting where the Deschutes County Commission asked DEQ to assume responsibility for the groundwater protection program in that area. Nearly 125 residents attended the meeting, and engaged in a good discussion with DEQ staff about ideas and expectations for a steering committee, still to be formed, to develop recommendations to address the nitrate and groundwater concerns. DEQ will post the meeting notes, full audio recording and some next steps on the project website, and will communicate directly with meeting attendees and area residents to solicit members for the project's steering committee.

ESCO

After meeting with members of the northwest Portland neighborhood community and ESCO in January, DEQ received additional comments on discussion drafts of its request for proposals for an independent audit of ESCO's emission control strategies and comparisons to similar facilities' reductions of controlled and fugitive emissions of odor, particulates and toxics. DEQ also received comments on monitoring concepts for several efforts in northwest Portland, including measuring toxics at Chapman school, repeating the Cooper Environmental Study and additional monitoring for particulate and metals.

ESCO has asked for a meeting with DEQ and a member of the northwest neighborhood community in February to discuss additional monitoring. The company has indicated it would prefer tabling the monitoring proposal until after the audit is completed. DEQ will finalize and release the request for proposals in February, and DEQ has solicited names of qualified bidders from both ESCO and the northwest neighborhood community.

Proposed Bradwood Landing LNG project

The Federal Energy Regulatory Commission recently told the National Marine Fisheries Service that they must begin their consultation process to develop the biological opinion for the project, despite the fisheries service's position that more information is needed. DEQ continues to gather information on the potential environmental impacts of the project for use in processing air and water discharge permits for the facility. DEQ continues to work on the Section 401 Water Quality Certification and recently requested additional data collection and analysis based on recommendations from our third party review of hydraulics alteration modeling. DEQ and the National Marine Fisheries Service wrote a joint letter of agreement about the recommendations and the need for the additional data collection and analysis to complete each agency's regulatory process. DEQ plans to hold an informational meeting in Clatsop County March 3, 2010 to share information, answer questions and provide an opportunity for the public to give us information to consider in developing the draft permits and certificate. DEQ will not issue the draft permits and certificate for public comment until local land use changes are acknowledged and all information requested from the project has been received and analyzed. Challenges to Clatsop County's land use approvals for the project are ongoing.

Proposed Oregon LNG project

In October 2008, Oregon LNG filed an application with the Federal Energy Regulatory Commission to build a facility in Warrenton. DEQ received an application for an air emissions permit at that time, but the accompanying Land Use Compatibility Statement was not adequate for issuing an air permit. Recently, Oregon LNG shared initial information with DEQ related to the water discharge permit application and the company has stated intent to submit the application soon. The 401 Water Quality Certification process has not yet begun on this project, but the Oregon Department of Energy expects the Draft Environmental Impact Statement from

the Federal Energy Regulatory Commission by April, which would likely start the 401 process. When applications and permitting for the project move forward, DEQ will hold public meetings to share information with community members and hear local perspectives and concerns.

Proposed Jordan Cove LNG and Pacific Connector Pipeline project

The proposed Jordan Cove LNG terminal would be located on the North Spit of Coos Bay and the 234-mile pipeline would originate at the facility and travel through Coos to Douglas, Jackson, and Klamath Counties, terminating in Malin, Oregon. The Federal Energy Regulatory Commission published a Draft Environmental Impact Statement for the project in August 2008. Because of the coordination complexities among three applicants, the US Army Corps of Engineers published a Joint Permit Application for public comment in August 2009 that incorporated DEQ Section 401 Water Quality Certification information. Due to the volume of material to review and public interest in the project, the public comment period was extended to December 27, 2009. During the comment period, DEQ made copies of all project materials available to the public at DEQ offices in Portland, Coos Bay and Medford. DEQ Section 401 program staff and several Western Region staff have been coordinating with other state and federal agencies and the applicants for several years. The applicants have not yet filed air or water discharge permit applications with DEQ, but they have been working with DEQ's Air Quality Division to prepare the model for the Title V permit. Depending on applicant responses to information requests, DEQ may hold a public meeting in Coos Bay in spring or summer of 2010.

Graywater rulemaking update

An external graywater advisory committee has met three times and is working to provide DEQ with recommendations on the development of new rules for the treatment, disposal and reuse of graywater. House Bill 2080, signed into law by Governor Kulongoski in June 2009, directs the commission to consider the recommendation of an advisory committee when adopting rules on graywater permitting. The 15-person committee includes individuals representing public health, building codes, sustainable development, architecture and planning, wastewater treatment, environmental conservation and environmental advocacy groups. The committee will develop recommendations on the safe use of graywater for beneficial purposes that ensure the protection of public health, safety and welfare, public water supplies and state waters.

The advisory committee has:

- Developed a list of potential graywater uses
- Discussed public health concerns with graywater use
- Reviewed concerns regarding the use of high organic waste graywater, such as that originating from kitchen sinks
- Reviewed rules and guidance from other 10 other jurisdictions that currently allow graywater reuse

- Started work on a statewide graywater policy statement
- Identified seven characteristics of a good graywater rule, including provisions that the rule must:
 1. Conserve potable water through innovative approaches
 2. Prevent and control ground and water pollution
 3. Make the reuse of graywater accessible to the public
 4. Streamline the interaction of public agencies
 5. Educate regulatory bodies and the public about graywater use
 6. Provide clear guidelines/rules for installing and maintaining graywater systems
 7. Protect the environment and public health

The advisory committee will continue to meet on a monthly basis until fall 2010, and DEQ will hold a public comment period in late 2010. DEQ plans to propose rules for commission adoption in October 2011.

Underground injection control program

DEQ's underground injection control program has been active in late 2009 and early 2010 with review of four geothermal projects and permits, an enhanced enforcement effort for unauthorized systems, development of a water pollution control facility permit template and increased public engagement through its webpage.

Program staff identified nearly 1,100 underground injection systems that are not authorized or under a permit, and sent over 100 warning letters to owners or operators whose wells posed the highest risk to the environment. About one-third of the recipients failed to respond, and DEQ plans to issue enforcement orders against those who did not respond. DEQ plans to send an additional 100 warning letters to owners and operators of other high-risk systems in March 2010.

Program staff have been developing two model templates for individual water pollution control facility permits – one for municipal applicants and one for commercial facilities. The program has a backlog of 53 permits due to past amnesty periods and recent enforcement actions, and set a goal to issue 20 permits by Jan. 1, 2011. Staff have been soliciting public comment on the templates through DEQ's website and the State Library's e-survey program, and will begin writing permits after the June 30, 2010 completion date for the templates.

Advisory committees and work groups

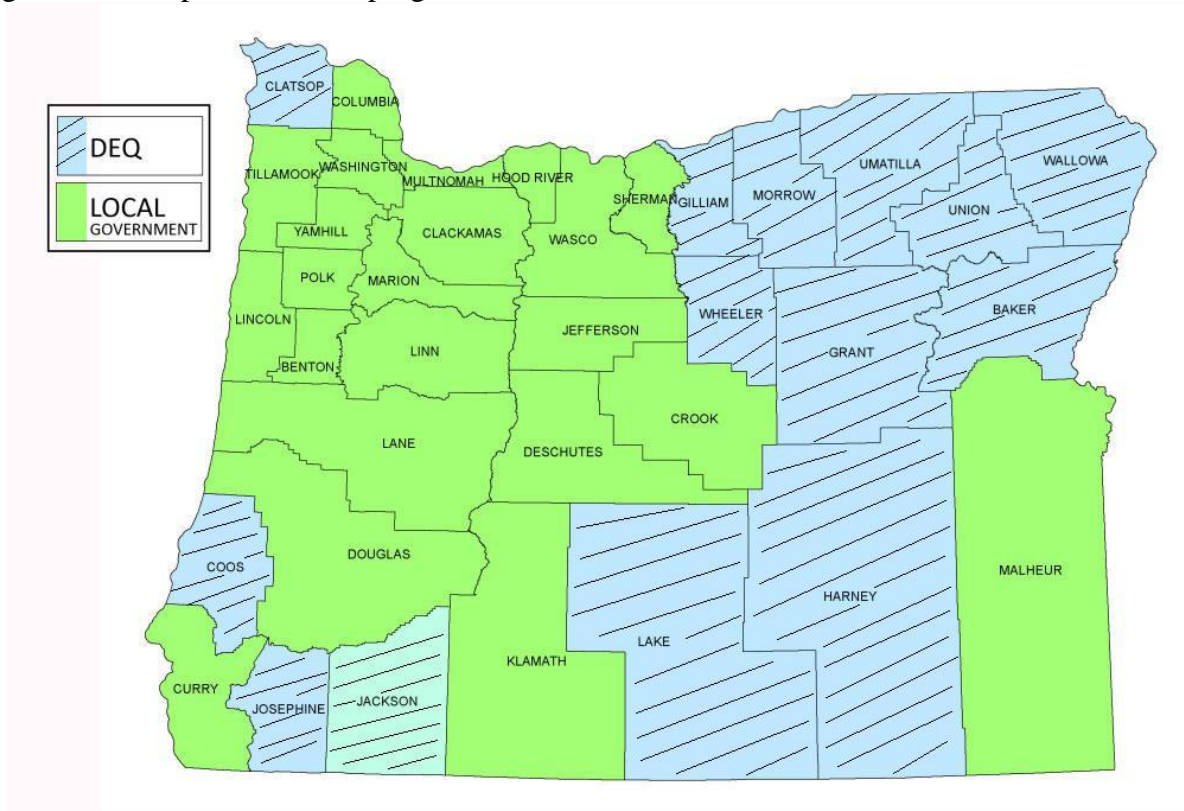
DEQ is actively engaging stakeholders and the public through an advisory committee and work group process. These active groups include the:

- Graywater advisory committee
- Wastewater permitting Blue Ribbon Committee
- Southern Willamette Valley groundwater management area advisory committee

- Small business compliance advisory panel
- Onsite advisory committee
- Greenhouse gas reporting advisory committee
- Dry cleaner program advisory committee
- Industrial stormwater advisory committee
- Low carbon fuel standard advisory committee
- Portland air toxics solutions advisory committee
- Air toxics science advisory committee
- Oregon E-Cycles advisory work group
- Product stewardship stakeholder group
- Persistent pollutant science work group
- Persistent pollutant methods work group
- Toxics reduction stakeholder work group
- Truck efficiency and reduced idling study group

Onsite program meeting with Lake and Harney Counties

DEQ staff met recently with county commissioners from Lake and Harney Counties to discuss the status and operations of the Onsite Program in these areas. DEQ currently operates the program, but the counties have asked DEQ to give them authority to operate the program at the local level, similar to the models used for building codes and health inspections in the two southeastern Oregon counties. The map below shows the distribution of DEQ-operated and local government-operated onsite programs around the state.



Senate Bill 737

Water quality staff members are developing rulemaking on trigger levels for priority persistent pollutants as part of Senate Bill 737, and intend to bring the proposed rule for commission adoption in June. A trigger level is the concentration of a pollutant in municipal wastewater treatment plant or water pollution control facility effluent that, if exceeded, "triggers" the preparation, by the treatment plant or facility, of a pollutant reduction plan. As soon as trigger levels are set in rule, municipalities will commence testing effluent for priority persistent pollutants to meet a July 1, 2011 deadline for submitting reduction plans. DEQ is working with municipalities to plan coordinated sampling and analysis.

DEQ held four public hearings in Eugene, Medford, Pendleton and Portland and received approximately 20 comments to date. DEQ granted an extension and comment period now closes February 23.

Senate Bill 737 requires DEQ to submit a report to the Legislature by June 1, 2010 on the sources of priority persistent pollutants and opportunities to reduce the discharge of these pollutants into water. DEQ is performing internal review on a draft report, and will make it available for public input March 12 through April 9, and hold public information sessions across the state in March.

Federal stimulus funds

DEQ received approximately \$49.5 million from the American Recovery and Reinvestment Act of 2009 in four program areas: clean diesel, leaking underground storage tanks, water quality management planning and the clean water state revolving fund. The state revolving fund received almost \$44.7 million of the total funds. As of last week, appropriately 26 percent of all ARRA funds received by DEQ have been expended for various projects across Oregon. The projects include seven municipalities and school districts for clean diesel retrofits; 13 individual leaking underground storage tanks cleanup sites; five water quality management planning projects and 13 individual state revolving fund projects.

All of the state revolving fund programs had a statutory deadline requiring money be under contract by February 17, 2010, which is one year after the passage of ARRA. Oregon successfully met this deadline on February 11 when the cities of Albany and Millersburg signed their contracts for a joint wastewater improvement project. The leaking underground storage tanks program also has a deadline to obligate 35 percent of the funds and expend at least 15 percent of the funds by April 28, 2010. The program met its obligation deadline at the end of December and plans to meet the expenditure deadline by April 28.

Lakeside Landfill

On Friday, February 12, Administrative Law Judge John Mann issued a ruling in an enforcement action involving the Lakeside Landfill in Washington County. The judge considered three legal issues, and made affirmative rulings in DEQ's favor for two of the issues.

The first legal issue the judge considered was whether the applicable permit and rules allowed off-spec glass cullet, a waste product of glass manufacturing, to be disposed of at the Lakeside Landfill. The landfill's operator acknowledged that this waste was disposed of at Lakeside in

October of 2007. DEQ considered this material to be industrial waste, which was not allowed at Lakeside. Grabhorn Inc., the owner of Lakeside Landfill, argued that the permit should be interpreted to allow this material at the landfill. The judge agreed with DEQ's interpretation of the permit and underlying regulations as prohibiting this material as industrial waste. The judge affirmed the civil penalty of \$7,230 for this violation.

The second issue that the parties asked Judge Mann to decide was whether Grabhorn Inc. had maintained sufficient financial assurance for maintenance of the landfill during the post-closure period. Grabhorn Inc. argued that certain DEQ rules governing calculation of financial assurance requirements did not apply to its facility. The specific rule in question requires non-municipal landfill facilities to calculate anticipated costs in current dollars using a discount rate tied to a specified U.S. Treasury bond rate. Judge Mann agreed with DEQ's interpretation that Lakeside Landfill's financial assurance requirements should be calculated under this rule. Judge Mann affirmed the civil penalty of \$9,282 for this violation, and ordered Grabhorn Inc. to secure additional financial assurance for post-closure care. Judge Mann did not specify the amount of financial assurance needed to bring the facility into compliance.

DEQ had initially also cited Grabhorn Inc. for operating in excess of permit size limits. DEQ later withdrew the penalty for this violation because the facility had reduced the operational size to within permit limits. Judge Mann found that DEQ was not entitled to a favorable ruling on this issue because DEQ had not measured the specific dimensions of the alleged size exceedance.

The parties have until March 15 to appeal Judge Mann's decision to the commission. If neither party appeals within that timeframe, the decision will become a final order of the commission on that date.