



Blue Ribbon Committee Report on Key Enhancements to the Oregon Wastewater Permitting Program

Submitted by:

Blue Ribbon Committee on the Oregon Wastewater Permitting
Program

Date: August 10, 2004

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Preface/Signature Page

We, the members of the Blue Ribbon Committee on the Oregon wastewater permitting program, submit this report to the Oregon Department of Environmental Quality (DEQ) for its consideration. This report encapsulates the Blue Ribbon Committee's key discussions about the wastewater permitting program, including those related to permit development and compliance activities, and provides specific recommendations for enhancing the effectiveness and operation of the program.

We believe that full and timely implementation of this integrated package of recommendations will enable the wastewater permitting program to effectively and efficiently fulfill its responsibilities under state and federal law to protect Oregon's water quality.

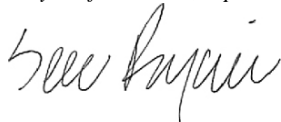
By signing, we are endorsing this report and calling on DEQ, the Governor, and the Oregon Legislative Assembly to act promptly to implement the report's recommendations.



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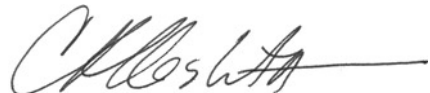
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Executive Summary

This report presents key recommendations of the Blue Ribbon Committee (BRC) on the Oregon wastewater permitting program to enhance the effectiveness and operation of the program and protect the quality of Oregon's waters. The BRC strongly believes the full and expedient implementation of these recommendations as a comprehensive package will enable Oregon to fulfill its responsibilities under state and federal laws to protect Oregon's water quality.

The BRC, a diverse group of business, municipal, consulting, environmental, and community interest representatives from across Oregon, was established by the Oregon Department of Environmental Quality (DEQ) in 2002 to suggest ways to enhance the wastewater permitting program. From December 2002 to July 2004, the BRC conducted an in-depth review of the program, discussed issues and concerns related to permit issuance and compliance, and identified specific program activities and actions needed to strengthen these critical functions. Key areas of concern included the backlog of major National Pollutant Discharge Elimination System (NPDES) permit renewal applications (in 2002, the worst in the nation), the growing complexity of NPDES permit regulations, the increasing number of sources subject to NPDES permit requirements, and serious DEQ wastewater permitting program resource constraints.

The BRC recommends the following vision to guide the program:

“DEQ’s wastewater permitting program improves and protects water quality through timely, predictable, innovative, responsive, and transparent regulation of point sources.”

To enact this vision, the BRC determined that a revamped systems approach was needed to improve the program. This integrated approach requires a combination of innovative changes, administrative detail solutions, and agency culture change. The BRC endorses implementation of the following recommendations to enact this vision.

○ Watershed-Based Permitting Cycle

Watershed-based permitting is the core BRC recommendation to strengthen the wastewater permitting program. This approach includes the following key components:

1. A cyclic watershed-based approach to most permitting and compliance activities to bring about better permit planning and follow up, as well as integration with other water quality programs and activities;
2. Preparation of a watershed-based permit issuance plan to support improved and timely work planning; and
3. A process for determining the resources that DEQ devotes to a permit application based on the environmental significance of that permit within a watershed. This process would allow DEQ to assign limited resources appropriately while assuring adequate coverage of the full suite of permits.

○ Up-to-Date, Consistent Wastewater Permitting

The BRC recommends a series of actions to improve the timeliness and quality of the permits issued by DEQ. Key elements of the recommendation include:

1. A reinvigorated permit policy development infrastructure to bring focused attention to important policy issues; and
2. An explicit process for resolving issues that threaten to delay the review or issuance of specific permits.

○ Sufficient, Appropriate Compliance and Inspection Program

The BRC supports DEQ having a strong, effective permit compliance and inspection program. To ensure this, the BRC recommends that the agency:

1. Establish, implement, and communicate a compliance and inspection plan (based, in part, on the environmental significance of permits within a watershed) to support focused, timely, effective compliance/inspection activities;
2. Review permit discharge monitoring reports (DMRs) on a regular basis and follow up quickly on any anomalies or exceedances of permit limits; and
3. Encourage and advance the use of electronic DMRs and the deployment of new data systems to transmit, store, and support review of compliance data.

○ DEQ Actions

DEQ will have primary responsibility for implementing the recommendations described in this report. The BRC is confident that DEQ is prepared for the task, but feels strongly that the program must demonstrate strong leadership, track and report on program implementation progress, and provide greater accountability to the Oregon Legislative Assembly (Legislature), the businesses, and the people of Oregon.

The BRC recommends that DEQ establish and report annually on a small number of explicit accountability measures, as well as progress toward implementation of the watershed approach. The annual report should be sent to the Legislature and the Environmental Quality Commission, and be made available to the general public. Appropriate accountability measures may include the following:

1. Percent of wastewater permits that are issued on the basin cycle, as anticipated in the annual permit issuance plan.¹
2. Percent of wastewater permits (including stormwater permits) that are current.
3. Number and average length of time for the assignment of construction stormwater permits and other general permits after receipt of an application for coverage.
4. Percent of DMRs that are reviewed in a timely manner.
5. Average length of time to initiate a response to any noncompliance situation identified through a compliance assessment.

¹ The BRC acknowledges that some permits (e.g., stormwater construction permits) are not scheduled as part of the watershed-based permitting approach and should not be considered as part of this measure.

6. Percent of major/minor/general permittees that receive a compliance inspection each year.

The BRC believes that DEQ's wastewater permitting program must ultimately implement significant structural changes to fully realize the recommended program vision. These include:

1. Working within the basic framework of the watershed-based permitting system;
2. Preparing and carrying out permit issuance and compliance and inspection plans;
3. Establishing and implementing a system for identifying the resources needed to review specific permits;
4. Implementing an elevation process to identify and resolve permit issues; and
5. Coordinating and communicating program policy development activities and decisions.

○ Legislative Actions

The BRC recognizes that implementation of several of the recommendations described in this report, including efforts to secure additional funding of the wastewater permitting program, will require action by the Legislature and requests that the Legislature expeditiously enact legislation needed to implement these recommendations.

Specifically, the BRC recommends that the Legislature do the following.

1. Provide additional funding for recommended program reforms. Program reform implementation will involve hiring staff to support enhanced data management, laboratory analysis, enforcement, and policy development activities. When providing these additional funds, the current percentage allocation of costs among permit holders, state funds, and federal funds should be carried forward.
2. Enact legislation, as needed, to allow for collection of wastewater program fees on an annualized basis. This action can provide much-needed predictability and certainty for both permitted sources and DEQ. Annualized fees also reflect the BRC's belief that permit fees should support the permit program as a whole, rather than any specific permit program function or service for a specific permit.
3. Allow for a modest annual permit fee inflator (not to exceed three percent, generally) to help address inflationary costs increases.
4. Establish a separate fee category to process new and off-cycle permit modification requests.
5. Remove, if necessary, any statutory requirement to issue general permits via rulemaking proceedings. Allowing DEQ to issue general permits as orders would streamline the use of this valuable permitting tool for dealing efficiently with large numbers of similar discharges.

The package of actions endorsed by the BRC work together to strengthen, support, and make more efficient DEQ's wastewater permitting program and infrastructure, to focus DEQ's work and energies, and ultimately, to ensure that the program is fully equipped to meet the challenge of protecting the quality of Oregon's water bodies for years to come.

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I. Overview

This report summarizes key discussions and areas of agreement of the Blue Ribbon Committee (BRC) on Oregon wastewater permitting program and describes major changes the BRC believes are needed to improve the operation of the Oregon wastewater permitting program and ensure that the Oregon Department of Environmental Quality (DEQ) maintains National Pollutant Discharge Elimination System (NPDES) program delegation under the Clean Water Act. The recommended program enhancements are designed to be implemented as a package and not in a piecemeal fashion. BRC members believe that full and timely implementation of these recommendations is essential to enable the wastewater permitting program to effectively and efficiently fulfill its responsibilities under state and federal law to protect Oregon's water quality.

○ Establishing the Blue Ribbon Committee

In fall 2002, the Director of the Oregon DEQ established a “*Blue Ribbon Committee on the Oregon Wastewater Permitting Program*” to provide advice to the agency regarding:

1. Statutory, administrative rule, and/or policy changes to enhance the effectiveness of the program;
2. Innovative program initiatives or directions DEQ may take to make the program more effective;
3. Performance measures by which to assess the effectiveness of the program; and
4. Mechanisms for funding, fee methodologies, and/or other revenue creation to operate the program.

The BRC is composed of members representing a variety of regulated interests (including industrial and municipal wastewater dischargers), technical/engineering consultants, and environmental and community interests¹ from across the state. The BRC worked with DEQ staff over a 20-month period to conduct an in-depth review of the program and explore a range of opportunities to strengthen the wastewater permitting program.² The BRC operated at a policy and programmatic level, and did not attempt to determine the specific means of implementing individual strategies or actions. The facilitators and DEQ staff prepared several discussion papers for the BRC's consideration as a way to stimulate and record the BRC's discussions.

○ Initial Blue Ribbon Committee Perspectives on the State of the Program

As it began its discussions, the BRC identified a range of concerns related to the performance of Oregon's wastewater permitting program. This list galvanized and helped organize the group's ongoing discussions. Key concerns noted at the beginning of the process included the following.

1. DEQ's backlog of NPDES major permit applications was reported to be the worst in the nation.
2. Program resource priorities were not always based on environmental significance.

¹ Please see Appendix A for a list of BRC members and alternates.

² The BRC was aware that EPA Region 10 was conducting a concurrent (yet broader) review of DEQ's wastewater program. In practice, these two efforts had limited opportunities to synchronize and share ideas or findings. As a result, the BRC's recommendations are not specifically intended to address EPA's program review, although many of the recommendations will likely respond to concerns raised by EPA.

3. The universe of wastewater sources requiring NPDES permits and the complexity of permits in Oregon were increasing.
4. Wastewater permits were inconsistently developed and enforced in different (DEQ) regions across the state.
5. DEQ was challenged to meet workload demands. State wastewater permitting program resources were expected to become even more limited, while future funding options were likely to become further constrained.
6. DEQ did not use facility-reported compliance information and other data in a timely and consistent fashion to understand the status of specific wastewater permits.
7. Permit and compliance information were not readily available to regulated entities and the public.
8. Wastewater permitting program leadership appeared to be lacking, causing permits and policy decisions to languish.
9. Individual permitting program staff did not appear to be accountable for the consistency or delivery of their work.
10. The wastewater permitting program was not well-connected to other water quality programs, causing inconsistent interpretation and use of water quality standards, Total Maximum Daily Loads (TMDLs), and other water quality requirements, tools, and activities.

The BRC notes and appreciates that DEQ has already acted (or is working quickly) to address several of these concerns (e.g., reducing the NPDES major permit application backlog and making permit status information publicly available).

○ Blue Ribbon Committee Vision for the Wastewater Permitting Program

From its earliest discussions, BRC members expressed support for the wastewater permitting program and a strong desire to strengthen it. The BRC prepared the following vision statement as a guide to its recommendations for the wastewater permitting program:

“DEQ’s wastewater permitting program improves and protects water quality through timely, predictable, innovative, responsive, and transparent regulation of point sources.”

The program improvements and restructuring suggestions described in this report, if fully implemented, will enable DEQ to realize this programmatic vision.

○ Overview of the Report

This report is organized around three major programmatic building blocks recommended by the BRC: 1) watershed-based permitting; 2) up-to-date, consistent wastewater permits; and 3) sufficient, appropriate compliance and inspection program. The following three sections address each of these building blocks in turn and include discussions of several key elements of each specific building block. Following these discussions, the report describes specific BRC recommendations to the Oregon Legislative Assembly (Legislature) and DEQ.

II. Key Recommendations

The following sections outline the key strategies and actions that the BRC supports to strengthen the wastewater permitting program.

○ A. Watershed-Based Permitting Strategy

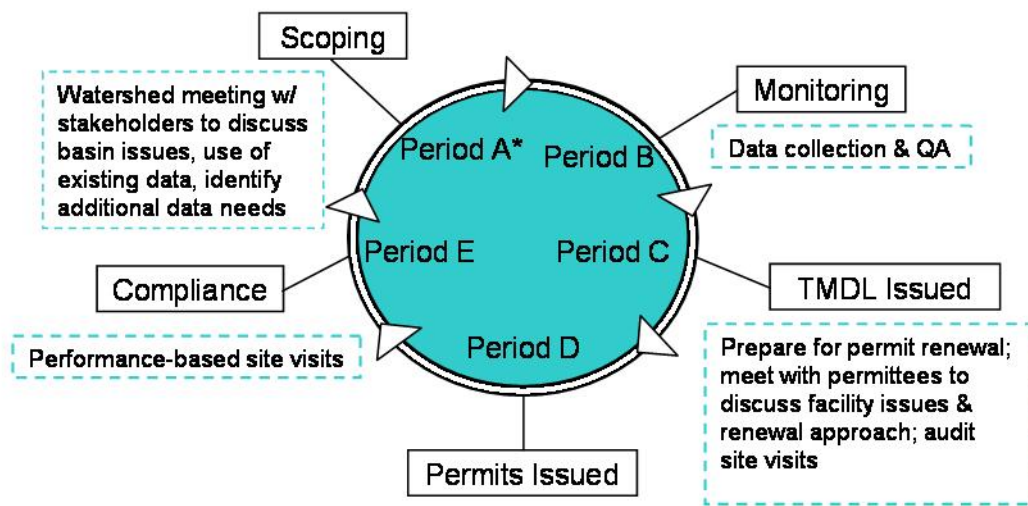
Watershed-based permitting synchronizes and integrates permit scoping and planning, data collection, permit issuance, and compliance review and assurance activities within a specific watershed. This integrated approach to permitting forms the core of the BRC's recommendations for strengthening the wastewater permitting program's ability to protect water quality in Oregon.³ It allows DEQ to: 1) engage with the permittees in a given basin in a coordinated fashion, rather than on a permit-by-permit basis; 2) conduct a permitting process that maximizes environmental benefits and administrative efficiencies; and 3) develop and oversee permit compliance in a given basin in a logical and phased approach, based on environmental significance.

The BRC recommends that effective implementation of this major building block include the following key elements.

- 1. Establish and follow a regular, cyclic watershed-based approach to permitting.** Watershed-based permitting is a regular, predictable five-year cycle of activities organized to fully prepare for, develop, issue, and oversee compliance with wastewater permits within a given basin. Coordinating permitting activities within a basin enables DEQ to quickly consider the fullest range of discharge requirements and water quality conditions, and act to maximize water quality benefits. This action also facilitates and encourages greater integration of permitting actions with other critical water quality information, programs, and activities. [*Figure 1* depicts how permit program activities may be incorporated into a regular cycle for a given watershed.]

³ The BRC believes that certain categories of permits (e.g., new permits and stormwater construction permits) are not appropriate for inclusion in the watershed-based approach, as described in this report. These permit holders should be addressed separately by the wastewater permitting program, but also in a timely and efficient fashion.

Watershed Approach to Permitting



* Time period will generally vary from 6–18 months, according to the complexity of environmental issues in the basin.

Figure 1

2. **Establish, maintain, and publish a watershed-based permit issuance plan.** This recommendation builds on the watershed-based permitting recommendation described above. The BRC believes that establishing and publishing permit issuance plans will help ensure that DEQ stays current with the five-year cycle and is ready to renew permits when they expire.
3. **Establish a system** for determining the type and level of resources that DEQ devotes to a specific permit. The system should be **based on a permit’s environmental significance within a given watershed**. The BRC recognizes that DEQ has limited resources to assign to wastewater permit review and supports allocating wastewater permitting program activities according to the environmental significance of specific permits. All permits will be reviewed in a timely fashion; however, DEQ resources will be allocated based on environmental significance to ensure that environmental impacts are minimized efficiently. Establishing this system within a watershed-based permitting context allows DEQ to further refine how each permit is managed over the course of the five-year cycle.
4. **As appropriate, coordinate the watershed-based permit cycle with other water quality program elements**, such as TMDLs, water quality standards, and nonpoint source activities. [Figure 2 depicts how and when these different program elements may be coordinated.] The BRC recognizes that these other programs are outside of its direct purview, but emphasizes that integrating these activities with wastewater permitting provides powerful opportunities to protect water quality at the watershed level.

Watershed Approach

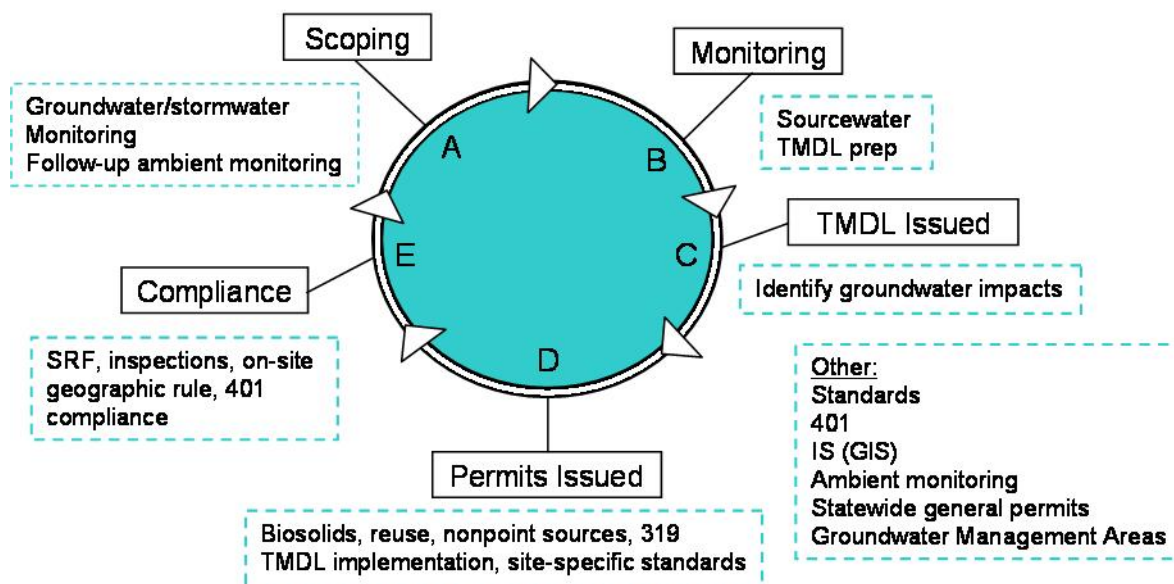


Figure 2

5. Continue to **assign staff resources to review and take timely action on “demand-driven” permits**, such as those for new activities and for discharges of stormwater from construction activities, which require attention on an as-needed basis and do not fit neatly within the regular watershed permitting cycle.

○ B. Up-to-Date, Consistent Wastewater Permits

To address concerns related primarily to permit renewal backlogs and a perception of inconsistent (or inadequate) permit requirements across regions within the state, the BRC recommends a series of improvements intended to improve the currency and quality of the wastewater permits DEQ issues. The BRC believes that implementation of the following actions will help ensure that data submitted by permit holders are used in a timely fashion (so that DEQ can avoid having to ask a facility to collect additional and often costly data) and that permits are issued in a timely manner.

1. **Establish state-wide permit writer tools, trainings, and expertise.** The BRC recognizes that DEQ has developed (or has begun to develop) several tools that permit writers can use to prepare permits. Wide deployment of these various tools (e.g., electronic permit writer wizards or permit templates) will enable greater standardization and consistency among permits across the state and allow DEQ to process permits more efficiently. As part of this strategy, the BRC also recommends that the wastewater permitting program consider training and identifying “sector experts” to work with specific categories of dischargers. The BRC anticipates that developing such expertise will create new permit writing efficiencies and enhance DEQ’s ability to provide technical support and assistance to the regulated community.
2. **Strengthen state-wide coordination of wastewater permit policy development.** The BRC believes that focusing staff resources to establish program policies will bring greater attention to this important activity. A critical follow-on action is to communicate these broader policies to the

state regional offices, related water quality program offices, the regulated community, and the general public so that the policies will be consistently applied across the state. The BRC further recommends that the regulated community and other interested parties be invited to participate in and comment on policy development discussions, as appropriate.

3. **Strengthen the program infrastructure by establishing an explicit process for ‘elevating’ challenging permit issues and questions that cannot (or should not) be resolved by a permit writer.** One important concern expressed by several BRC members is that DEQ lacks a process for identifying and resolving (or referring to the appropriate program)⁴ permit issues that come up during permit issuance but for which no clear policy direction exists. This problem contributes to the permit renewal backlog and is related to the perceived lack of permit policy development infrastructure. Establishing an elevation process (in tandem with an action to reinvigorate the policy development infrastructure) will help ensure that permits with difficult policy issues are dealt with consistently and expeditiously.
4. **Explore non-traditional and innovative approaches to permitting.** The BRC discussed several non-traditional approaches to permitting, including an option to establish a category of “simple permits” that allow for minor customization of general permits. The BRC also discussed another option to establish new categories of general permits (e.g., for sources having similar discharges). The BRC believes that taking innovative approaches to permitting may enable wastewater permitting staff to provide appropriate support and review to all wastewater permits without diverting substantial resources from other program activities.

○ C. Sufficient, Appropriate Compliance Touch Points

The BRC strongly endorses DEQ having a solid compliance and inspection program. Compliance and inspection activities are an important way for regulated entities to know they are meeting their permit requirements (or, if not meeting them, what actions are needed to come back into compliance) and for the public to know that Oregon’s waters are being protected.

The BRC’s recommendations for providing a sufficient, appropriate compliance and inspection program are built around the following key elements.

1. **Establish and implement a compliance and inspection plan aligned, as appropriate, with the watershed cycle.**⁵ In developing the inspection plan, DEQ can consider the following factors: the environmental significance of the discharge; size of facility/discharge; frequency of discharge; discharge monitoring reports (DMR) findings; and/or the presence at the facility of alternative or innovative compliance systems. As with the permit issuance plan discussed above, the BRC believes that preparation of a compliance/inspection plan will help ensure that the wastewater permitting program meets its inspection commitments. The BRC notes that some facilities will want DEQ to continue to conduct annual inspections, while others believe that on-site inspections could be supplemented, and perhaps reduced, by a thorough review by DEQ of

⁴ The BRC discussed that some issues encountered during the permitting process are more appropriately addressed by another program, such as the water quality standards or TMDL programs. It is important that such issues are referred to those programs for action and that the policy implications or decisions are quickly communicated back to the wastewater permitting program.

⁵ The Committee acknowledges that DEQ cannot make public all of the details of the inspection plan, especially as they relate to unplanned/surprise facility inspections.

DMRs or through facility participation in an innovative compliance system. The BRC acknowledges that different inspection schedules work for different entities and, as such, supports DEQ working to ensure that different parties' needs are met.

2. **Review DMRs in a timely manner.** Timely and consistent DEQ review of DMRs is needed to help identify facilities requiring assistance to meet the discharge limits set in their wastewater permit(s). The BRC emphasizes that it is important for DEQ to follow up quickly and correct any apparent data anomalies or permit violations identified in the DMRs submitted by permitted facilities.
3. **Finalize and activate a discharge monitoring data system.**⁶ DEQ's new discharge monitoring data system, when implemented and loaded with data, will automatically flag potential permit violations reported in DMRs. For this reason, the BRC believes that the full implementation of this system can introduce much-needed efficiencies and effectiveness into the DMR review process at DEQ.
4. **Advance the use of electronic DMRs and finalize development of a data system** to allow facilities to submit DMR information electronically. BRC members strongly support the promotion and voluntary use of electronic discharge monitoring reports and encourage DEQ to establish incentives to promote permit holders' adoption and advancement of these technologies.
5. **Evaluate the use of alternative compliance processes, such as third party compliance audits and environmental management systems,** that encourage facilities to take greater responsibility for identifying and addressing compliance issues or engage in "beyond compliance behaviors." The BRC recommends exploring whether these approaches are appropriate for certain types of permit holders in Oregon and whether they might free up DEQ program resources to focus compliance activities (including technical assistance) where they are most needed.
6. **Establish a system to document (and make public in real-time) the resolution of specific compliance problems.** Track key dates and follow up actions. Establishing a system to document and track the resolution of compliance issues enables DEQ, the permit holder, and the greater community to understand how compliance problems are being addressed. The BRC believes that the accountability of permitted facilities and DEQ will be enhanced by such a system.

III. Legislative Actions to Institutionalize and Fund BRC Recommendations

The BRC recognizes that implementation of several of the recommendations identified above may require specific action by the Legislature. The BRC endorses these actions and requests that the Legislature, in its upcoming 2005 session, enact any legislation needed to implement the recommended changes. Major recommendations that may require legislative action include the following.

- › **Establish and follow a regular, cyclic watershed-based approach to permitting (Recommendation IIA1).** The BRC recommends that the Legislature adopt new statutory language to designate the watershed-based approach to permitting as state policy. This permitting approach is the cornerstone of the BRC's recommendations for a positive and fundamentally improved approach

⁶ DEQ is currently trying to secure federal funding to finalize and support initial data entry to the agency's new compliance data system. The BRC supports DEQ's efforts and recognizes that this step is important to enabling electronic reporting by facilities and related DMR review improvements.

to wastewater permitting. The new statutory language should also call for DEQ to 1) prepare a plan⁷ describing how the agency plans to implement a watershed-based approach, and 2) report annually to the Legislature on its progress toward the plan's implementation.

- › The BRC also supports **removal of any statutory requirement to issue general permits for wastewater discharges via rulemaking.** The BRC believes that requiring rulemaking to issue general permits diverts program resources from other important activities and may discourage additional general permits.

○ Program Funding, Permit Fees, and Fee Table Structure Modifications

The BRC spent considerable time reviewing the results from a DEQ workload modeling exercise and determined that full but efficient implementation of the BRC's recommendations will require an additional five staff positions. The BRC is confident that the efficiencies introduced through this improved program make it possible for DEQ to fulfill its permitting and compliance responsibilities with only this modest increase.

During its discussions, the BRC also learned that the wastewater permitting program is currently funded by a mix of federal funds (9%), state funds (30%) and permit fees (61%) [see *Figure 3*], and that it relies to some extent on one-time grant monies, consuming balances, and other sources of revenue that are not easily sustained over time. Furthermore, the BRC learned, the program has not had a fee increase in four years and, in fact, recently underwent a General Fund reduction as part of the state's budget rebalance. As a result, four current staff positions that are critical to the success of the improved program are now at risk unless additional monies can be found to keep them in the program. The BRC recognizes that significant changes in the amount of funding and the way the funding is generated are needed to retain staff positions, bring on the needed additional staff, and provide stable annual revenue needed to sustain the recommended program. The BRC firmly supports efforts to undertake the necessary changes, as described below.

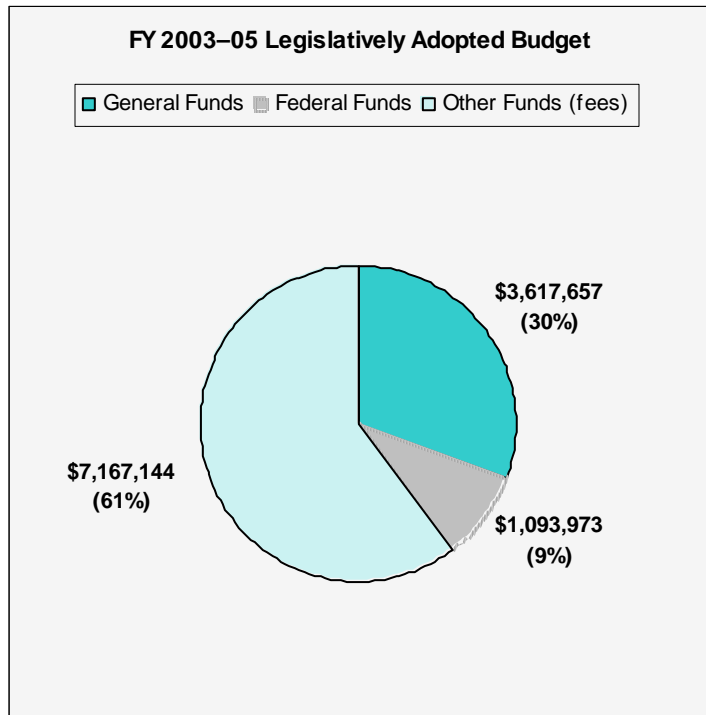


Figure 3

Funding Sources

Over the course of the BRC's discussions, members expressed a range of views on how the wastewater permitting program should be funded. All members agreed, however, that monies collected by the program should support the program broadly (including permitting, compliance, data management, and

⁷ Within 120 days of the legislation's passage.

policy development activities), rather than be collected and apportioned according to a fee-for-service model.

- › The BRC emphasizes that the recommended program reforms are designed to work as an integrated package of improvements (rather than a collection of discrete enhancements). As such, the BRC considers full funding of the entire package to be integral to the overall success of the redesigned, highly efficient, and highly effective wastewater permitting program it is proposing. Because of the programmatic nature of the proposal, the BRC recommends that the **current percentage allocation of costs among permit holders, state funds, and federal funds be carried forward and used as the basis for generating the funds needed to reform and strengthen the program.**
- › The BRC agrees with DEQ’s workload modeling exercise that the program will need to add approximately five additional full time employees (FTE) (beyond current staffing levels) over the next two biennia to support full implementation of the BRC’s recommendations. These positions will support activities related to data management (2006), laboratory and enforcement (2007), and policy development (2008). [See *Figure 4.*] **The BRC asks that the Legislature, as it determines how to fully fund this program, maintain the current percentage allocation of costs among the state, federal, and permit fee revenue sources.**
- › The BRC also supports the Legislature and DEQ in identifying and pursuing any additional sources of funding to address the recommended funding levels.

Figure 4: Wastewater Program FTE Needs and Responsibilities (based on 6/04 data)		
FY	FTE Needed (Restoration/ Phase-in) +	Primary Responsibilities
2005	4	
2006	2.5	data management
2007	1.5	laboratory; enforcement
2008	1	policy development
2009	–	–
<i>Assumptions:</i>		
+	<i>Restored FTE estimated at 4 FTE; new FTE at 5 FTE</i>	

Permit Fee Structure

The BRC understands the need for a reliable, stable program revenue source; the importance of keeping pace with inflation; and the importance of funding all aspects of the program. The following enhancements to the permit fee structures relate to these issues.

- › The **BRC urges the Legislature to replace the current fee collection system with an annual (normalized) wastewater program fee collection system.** Collecting annual fees provides predictability and certainty (of both costs to the permit holder and cash flow to the program), and further reflects the BRC’s belief that fees should generally support the wastewater permitting program. This modification further underscores an important BRC belief: that the wastewater permitting program is not, and should not be, run as a fee-for-service program. The shift also emphasizes “fees for performance” of the overall wastewater permitting program.

- › The **BRC endorses simplifying the wastewater permit fee structure to improve understanding of how fees are assessed.** Once a revised fee structure is designed, the BRC recommends that the changes be enacted through the normal rulemaking process.
- › The **BRC recommends that the Legislature allow for inclusion of an annual permit fee inflator** (generally, no greater than three percent) to help address increases in costs due to inflation. Adding an inflator will help provide for a sustainable and stable FTE base from which to run the wastewater permitting program, but cannot fully resolve the program’s funding challenges as other funding sources do not necessarily increase to cover inflationary costs.
- › The **BRC encourages the Legislature to establish a separate fee category to process off-cycle permit requests.** The BRC recognizes that the wastewater permitting program must carefully plan—and will allocate resources for—permitting activities via the permit issuance plan. Doing so will help ensure that watershed-based permitting can be fully implemented and that program staff can allocate sufficient review time for all wastewater permits. The BRC also recognizes, however, that some permit holders not slated for permit issuance (or re-issuance) in a given year may seek to have conditions in their permits modified. For this reason, the BRC supports assessing a reasonable one-time fee to cover DEQ program expenses associated with issuing the off-cycle permits.
- › The **BRC encourages the Legislature to quickly modify the appropriate statutory language,** as needed, to reflect these changes and supports DEQ acting to modify the associated regulations accordingly.

IV. DEQ Actions to Institutionalize BRC Recommendations

The BRC recognizes that successful implementation of its recommendations will rely on solid DEQ management support and leadership, as well as a commitment to ongoing, consistent structural adjustments to the wastewater permitting program infrastructure. This section highlights DEQ’s role in several of the recommended actions.

○ Program Accountability and Leadership

The BRC appreciates the outstanding efforts and support of the DEQ staff assigned to this project, and is confident that DEQ—and in particular, the wastewater permitting program’s leadership—is highly motivated to implement the program vision and the specific recommendations described in this report. At the same time, the BRC believes that the program must strengthen its accountability to the Legislature, the regulated community, and the citizens of Oregon. As a first step, the **BRC strongly recommends that DEQ establish and report on a small number of powerful “primary accountability measures.”** The measures described below provide a starting point for tracking measurable progress toward the program vision and implementation of the programmatic building blocks emphasized by the BRC. These measures only pertain to discrete aspects of the new program and are not intended as surrogates for overall program progress.

1. Percent of wastewater permits that are issued on the basin cycle, as anticipated in the annual permit issuance plan.⁸
2. Percent of wastewater permits (including stormwater permits) that are current.
3. Number and average length of time for the assignment of construction stormwater permits and other general permits after receipt of an application for coverage.
4. Percent of DMRs that are reviewed in a timely manner.
5. Average length of time to initiate a response to any noncompliance situation identified through a compliance assessment.
6. Percent of major/minor/general permittees that receive a compliance inspection each year.

The **BRC recommends that DEQ report on these accountability measures annually to the Legislature and the state Environmental Quality Commission, and post the report on the DEQ public website.** [Note: This report shall be combined with the annual report described in Section III, above.] The BRC also recognizes that DEQ, for management purposes, may wish to establish additional accountability measures. The BRC does not intend in any way to limit or constrain the agency's ability or decision to do so.

○ Improving Program Consistency, Responsiveness, and Transparency

The BRC appreciates and acknowledges DEQ's recent and ongoing efforts to make permit status and compliance information available on its public website, and supports the agency's continuing efforts to educate and engage its stakeholders. However, the BRC believes that the wastewater permitting program can and should take additional specific steps to improve the consistency, predictability, and transparency of its actions. Important recommendations related to this include preparing and posting to the public DEQ website:

1. Policy guidance describing how the environmental significance of a specific permit within a watershed will determine the level of DEQ resources devoted to that permit (Recommendation IIA3);
2. Permit issuance and compliance schedules/plans (Recommendations IIA2 and IIC1)⁹;
3. Policy guidance describing its elevation process (including major timelines and milestones) for resolving permit issues (Recommendation IIB3);
4. Resolution of compliance issues for specific wastewater permits (Recommendation IIC6); and
5. Annual reports, including those related to the primary accountability measures.

○ Need for Timely and Responsive Service

Finally, the BRC strongly endorses the wastewater permitting program taking specific actions that will enable the program to exemplify two key vision attributes: *timely* and *responsive* regulation of point sources. To fully realize these attributes, the BRC recommends that DEQ enact the following structural changes:

⁸ The BRC acknowledges that the issuance or assignment of some permits, e.g., permits for new facilities and stormwater construction permits, are not scheduled as part of the watershed-based permitting approach and should not be considered as part of this measure.

⁹ The Committee also recommends that DEQ consider including permit issuance and compliance/inspection plans in its Performance Partnership Agreement water quality program commitments.

1. Reinvigorate its policy development structure (Recommendation IIB2);
2. Establish a system to elevate specific policy issues identified by permit writers (Recommendation IIB3);
3. Provide sufficient training and permit writing resources to its staff (Recommendation IIB1);
4. Regularly review DMRs (Recommendation IIC2);
5. Establish and use data system and facilitate migration to electronic DMR submittal and review (Recommendations IIC3 and 4); and
6. Establish and report annually on accountability measures.

The BRC emphasizes that the success of the wastewater permitting program in the public eye will depend to a great extent on the program's ability to provide these core services.

V. Closing

The BRC believes that a strong, efficient, and effective state-run wastewater permitting program is good for the environment, the economy, and the citizens of Oregon. The BRC recognizes that DEQ's wastewater permitting program is lacking in several regards (e.g., it lacks adequate funding and resources, does not process permits consistently or expediently, and demonstrates inconsistent policy direction and issue resolution), but also believes that the program can and indeed must work effectively. The BRC strongly supports and endorses the package of program improvements described above and is committed to working with all parties, including the wastewater permitting program and the Legislature, to strengthen the program accordingly.

The BRC strongly recommends that these program improvements be fully implemented, fully funded, and widely supported by DEQ, the Legislature, businesses, and citizens of the State of Oregon. With these parties' support, endorsement, and active participation, and with full implementation of the actions and programmatic vision outline in this report, the wastewater permitting program can successfully meet the challenges of protecting Oregon's water quality for years to come.

Appendices

The following appendices build on and supplement the ideas and actions described in the Blue Ribbon Committee report.

Appendix A. Roster of Blue Ribbon Committee members, alternates, and participating DEQ staff

Appendix B. Strengths, Weaknesses, Opportunities, and Threats (SWOTs) Paper

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Appendix A: Roster of Blue Ribbon Committee Members, Alternates, and Participating DEQ Staff

○ Blue Ribbon Committee Members

Robert J. Austin, Mayor of Estacada, representing League of Oregon Cities
Edward P. Butts, P.E., 4B Engineering and Consulting
Michael R. Campbell, Stoel Rives, LLP
Jon A. Chandler, representing Oregon Building Industry Association
Cheryl Koshuta, Port of Portland
Charles Logue, Clean Water Services, representing Oregon Association of Clean Water Agencies
Karen Lewotsky, Oregon Environmental Council
Galen O. May, Golden NW Aluminum, representing Associated Oregon Industries
Craig Smith, representing Northwest Food Processors Association
Kathryn VanNatta, representing Northwest Pulp & Paper Association
David Welsh, Northwest Environmental Business Council
Travis Williams, Willamette Riverkeeper

○ Committee Alternates

Tracy Ashlock Barton, Combined Resources, representing Northwest Environmental Business Council
Joan Cloonan, representing Northwest Food Processors Association
Janet Gillaspie, representing Oregon Association of Clean Water Agencies
Linda Ludwig, representing League of Oregon Cities
Dorothy Sperry, representing Port of Portland

○ Participating Oregon Department of Environmental Quality Staff

Holly Schroeder 5/2003 to conclusion
Mark Charles 4/2004 to conclusion
Patti Seastrom 5/2003 to conclusion
Michael Korten Hof 12/2002 to 5/2003
Michael Llewelyn 12/2002 to 5/2003

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**Appendix B: Strengths, Weaknesses, Opportunities, and Threats (SWOTs)
Paper**

OREGON DEQ WASTEWATER PROGRAM

SUMMARY OF INITIAL FINDINGS FOR THE BLUE RIBBON COMMITTEE

February 12, 2003

Prepared by Ross & Associates Environmental Consulting, Ltd., facilitators for the Committee, based on interviews conducted December 2002 through early February 2003 with individual committee members, selected DEQ and EPA staff, and others familiar with Oregon's wastewater program.

Note: Ross & Associates did not “ground truth” the perceptions of interviewees with supporting data or evaluate the practicality and legal implications of suggested “opportunities”. Specific factual matters are subject to correction as appropriate.

A. STRENGTHS

1. **History of Success** – The wastewater program has successfully regulated a very large number of point sources, including many large and complex facilities. The program is responsible for effectively reducing or eliminating pollutant loadings to Oregon’s waters so that many potential public health and environmental problems have been solved or averted. The total number of active permits has steadily increased in recent years, as has the total universe of permits required, while the permit backlog has declined somewhat.
2. **DEQ Leadership** -- Senior department policy makers are generally trusted and respected. Observers frequently noted that the program has improved since Stephanie Hallock and/or Mike Llewelyn assumed their current roles.
3. **DEQ Technical Expertise and Integrity** – The wastewater program has some very strong scientific and technical expertise and the staff is considered to be principled and honest.
4. **DEQ Commitment to Program Improvement** – Most parties recognize that DEQ leaders are striving to improve program operations. Wastewater program managers, for example, have acknowledged many of their problems and are considering management improvements, including priority-setting and streamlining. DEQ-wide initiatives on information management, technical systems support, management excellence, and communications skills are very positive.
5. **Emphasis on Collaboration** – DEQ’s emphasis on collaboration with stakeholders is seen as promising. In return, stakeholders (e.g., Committee members) say they are committed to help the program succeed by providing constructive input to DEQ and the Legislature on permit program priorities and improving permit processes. They are committed to working towards consensus on an improved fee structure and strategy for reliable funding.
6. **Permit Documentation** – Oregon’s permits are generally well-documented and justified.
7. **Use of General Permits** – DEQ has shifted to the general permit approach for many classes of permittees and has thereby achieved significant efficiencies.

B. WEAKNESSES

1. **Communications** -- There is insufficient outreach to regulated entities and the public. The staff is focused on technical issues and often does not communicate well with permittees. Staff reticence can be interpreted as hostility or disrespect. Rather than articulating the reasons for program requirements, including the reasons for justifiable inconsistencies in requirements, staff sometimes fall back on blaming others (headquarters DEQ, the Legislature, their boss, EPA). DEQ does not acknowledge receipt of submittals by permittees or provide feedback about when permit issuance is likely to occur. Permittees sometimes feel that DEQ is a “black hole” into which they send information (and permit fees). Members of the public are not kept informed about possible adverse public health and environmental impacts that may result from DEQ budget cuts.
2. **Inconsistency and Lack of Accountability** – Because there are so many priorities, the program seems to wander without a clear focus. Core program work does not receive adequate emphasis. Regional office wastewater work is not organized in a consistent, understandable way. Headquarters DEQ is not adequately staffed to plan program operations properly or to give regional offices the policies and guidance needed to avoid serious inconsistencies, uncertainty and confusion. Regions are highly autonomous. While regions have the main authority for permit issuance, headquarters staff is held responsible for eliminating backlogs. There is no accountability system to track program priorities, timely permit issuance, or feedback to HQ on issues arising in the regional permit issuance process.
3. **Staff Issues** – Morale is perceived to be low while turnover is perceived to be high. Most observers believe the number of FTEs is inadequate given the number of required permits. Some observers believe the staff is over-specialized, while others believe there are too many generalists and not enough well-trained/experienced technically and scientifically competent permit writers. Success in the permit process is seen as highly dependent on the personality/skill of the permit writer assigned to a given permit. The staff is generally seen as resistant to change (e.g., to the shift towards a watershed-based approach).
4. **Crisis Management** – A single controversial or complex permit can pull many FTEs away from other work. Observers generally believe that better planning and advanced policy-setting could help avoid this and produce efficiencies.
5. **Role of the Regulated Community and Other Constituency Groups** – Some observers see permittees themselves as being “stuck in their ways”, resistant to change, and uninterested in supporting DEQ program improvements and environmental progress. For example, some permittees routinely challenge/question even routine permit conditions and fail to provide adequate information to allow permit writers to issue timely permits. Some consistently

demand special consideration, diverting resources from other activities. The confrontational approach to permit negotiations can waste public resources and contribute to other problems (e.g., backlogs and morale problems) at DEQ. Some observers similarly see environmental activists as too quick to litigate or use the media to publicize issues that could be resolved with DEQ and/or permittees in face to face discussions. This intensifies the atmosphere of controversy/polarization in which the program must operate.

6. **Backlogs of Expired Permits** – The number of expired permits is seen as a problem by many (though not all) observers. Those who are concerned point particularly to expired major permits (large/potentially significant dischargers). Delays in incorporating new TMDL-based limits and/or national effluent limitation guidelines requirements are delaying water quality improvements.
7. **Lack of Clarity on the Role of Local Government** – Delegations to local governments for storm water regulation has resulted in widespread inconsistencies and confusion for regulated parties as well as difficulties for those local governments. Some observers believe that there is inadequate consideration for the circumstances and views of local governments in the program generally.

[The following items are for discussion at later meetings of the Committee.]

8. **Permit Follow Up** – Some observers believe there is insufficient emphasis on permit implementation, compliance and enforcement. Some observers note that inspections of permitted facilities, both before permits are written and after permit issuance, to monitor compliance, are not frequent or thorough enough. Discharge Monitoring Report information is not managed electronically. There is little or no opportunity to resolve problems that permittees discover with permit provisions as they attempt to comply.
9. **Outdated Fee Structure** – While the fee structure may have been rational and understandable at one time, it is no longer considered to be so. Some permittees feel that there are too many statutory exemptions from permit fees so that, for those who do pay, fees are excessively high. Some permittees resent being asked to “underwrite” the cost of permitting for other entities. Others are opposed to any increase in their own fees. There is a range of views about whether a detailed workload model and/or production analysis would be useful in helping to sort this out.
10. **Budget Tracking** – It is difficult to track FTEs and resources assigned to the wastewater program. For example, individual wastewater employees may carry out many different functions (individual or general permitting, compliance reviews, inspections, etc.) and are not dedicated to specific tasks. Enforcement can “bill” the wastewater program for the FTEs it uses for wastewater cases, further decreasing resources available for permitting, disrupting planned staffing

patterns, and possibly creating a disincentive for the wastewater program to refer violations for enforcement action.

C. OPPORTUNITIES

1. **Increase Focus on Water Quality Results** -- The Blue Ribbon Committee's interest in supporting wise priority-setting and DEQ's move toward a watershed-based approach could help focus the wastewater program on environmental/public health priorities. Permits that are less important environmentally could be rolled over with relatively little investment of resources. Supporting environmental information improvement initiatives, such as the creation of a statewide multi-Agency water quality data base, could help assure the success of this effort through the provision of better information on water quality conditions and threats.
2. **U.S. EPA's Willingness to Partner with DEQ** – EPA Region 10's planned Program Review for DEQ's NPDES permit activities could help identify additional means and opportunities for improvement. EPA headquarters' potential interest in making the Blue Ribbon Committee process a national model could bring additional expertise and opportunities for flexibility to the process. EPA's sensitivity to the budget crises in many states could lead to more receptivity to priority-setting and targeting of water quality needs instead of focusing only on backlogs.
3. **Outreach/External Communications Improvements** – Possible opportunities include:
 - Adopt a “no surprises” transparency policy in dealing with the regulated community and the public
 - Offer pre-application meetings/consultations to permittees to assist in ensuring that applications are complete and accurate and to establish realistic expectations about the permit process
 - Conduct workshops for categories of permittees to explain requirements/get input on problems they face
 - Establish an ombudsman or dedicated “complaint follow up” staff
 - Train staff to better direct calls to DEQ experts able to answer specific inquiries
 - Cross-train permit writers in other programs so that they can answer basic questions about program inter-relationships
 - Provide technical assistance to small communities (e.g., on use of reclaimed water)
 - Inform the public about the choices needed to respond to budget problems (e.g., the environmental impact of allowing backlogs to increase)
 - Increase involvement of local governments in program decisions affecting them
 - Improve relations with the Legislature through more frequent communications on program accomplishments and challenges

- Help wastewater staff improve their communications skills through training
 - Improve links with land use authorities where programs intersect
4. **Program Management** – Focus more on advance planning, less on reacting to the issue of the day and special projects. Focus more on core programs, less on establishing new requirements in times of budget restrictions. Establish accountability systems for wastewater personnel throughout the state to keep them focused on clearly enunciated priorities. Set clear expectations, measures and timelines, with a focus on environmental priorities. Strengthen the performance appraisal process and establish clear yearly (or every-other-year) operating plans that are used internally and published externally. Invite regional administrators to meet with the Blue Ribbon Committee to discuss the importance of these initiatives and the need for better consistency, while still allowing for justifiable differences based on geographic diversity.
5. **Rely More on Others** -- Several observers suggested that more out-sourcing of program work may be needed. Some permittees noted that they (or their associations) would be willing to help develop workshops/models/materials on applications and permit provisions in order to assist permittees and permit writers. One commenter suggested that DEQ put the burden more squarely on permittees to defend the accuracy of their permit applications.
6. **Reduce the Backlog** – Observers do not agree on the degree to which the backlog of expired permits is important to the program’s success. However, the following suggestions were made about ways to address the problem:
- Make backlog reduction a temporary priority and assign dedicated permit writers to reissue expired permits on an urgent basis.
 - Give priority to reissuing “easy” permits in order to get backlog numbers down quickly; then focus on the more difficult, environmentally significant permits.
 - Identify permits that have minimal environmental significance and “roll them over” (i.e., extend expiration dates with minimal review of conditions).
 - Seek/exercise as much flexibility as possible on WPCF permits.
 - Eliminate the wastewater permit requirement for suction/dredge operations.
7. **Foster Consistency and Excellence in Technical Skills**– Training and tool development are needed to assist permit writers. Possible opportunities include:
- Make more use of permit “wizards”
 - Update the Permit Writers’ Manual and make it available electronically
 - Prepare a master list and compendium of relevant tools/guidance and policies and keep it updated
 - Develop checklists for permit writers

- Standardize permit language and provide models/templates
- Increase training opportunities for permit writers
- When attrition occurs, hire staff with strong technical expertise

8. Improve the Permit Development Process – Suggestions include:

- Consolidate permits for single entities (i.e., combine permits for different outfalls, facilities, stormwater/wastewater)
- Provide for electronic submittal of permit applications
- Focus on step-by-step requirements rather than simply on numeric effluent limits
- Drop permit provisions that are outdated or no longer justifiable
- Hold a DEQ staff person accountable as the “usher” or “shepherd” for each permit and have that person chart progress as the permit goes through the application/review process; hold that person accountable for raising issues/communicating about problems that could cause delays
- Provide for mediation of controversial permits to avoid the cost of litigation
- Consider use of general permits that allow trading for multiple facilities discharging the same problem pollutant in a specific watersheds

[The following are for discussion at a later meeting.]

9. Improve the Permit Implementation/Compliance Process -- Several observers suggested more focus on the permit implementation stage. Suggestions include:

- Streamline the administrative order process and improve coordination with the enforcement section
- Develop an electronic data base to track compliance schedules in permits and administrative orders
- Increase communications (possibly provide for mediation) around violations to help achieve compliance without enforcement
- Provide for ground-truthing of permit provisions that turn out to be unclear or have unintended consequences when the permit is being implemented

10. Make Funding Rational and Predictable – DEQ’s decision to work towards consensus on an FY 2005-7 budget approach through the Blue Ribbon Committee presents an opportunity to review the permit fee structure and reach agreement on how to pay for the program. Specific suggestions include:

- Seek increased general funding to ensure stability.
- Consider moving resources from other programs into wastewater
- Develop an equitable fee structure based on current circumstances
- Eliminate some or all exemptions from permit fees
- Provide incentives to reduce discharges through fee “rebates”

D. THREATS

1. **Health and Environmental Risks Increase** – If the program does not focus on the waters at greatest risk (e.g., impaired waters, drinking water supply waters) and the sources of greatest concern (e.g., those causing/contributing to impairments or threats, or those with a reasonable potential to do so), public health and environmental quality could deteriorate. Gains from past point source controls can be wiped out if O & M is neglected.
2. **EPA Program/Permit Reviews** – Although EPA is approaching its planned DEQ program review as a partner, the number of petitions requesting that EPA withdraw State NPDES program authorizations has increased dramatically in recent years. EPA may need to demonstrate its willingness to “get tough” or even to withdraw programs and may increase its review/veto of State permits if it determines that there are significant inadequacies in Oregon’s program.
3. **Growing Backlogs** – Declining budgets and an apparently continually expanding permit universe (e.g., aquatic herbicides, one acre construction site coverage for storm water permits) could overwhelm the program. This could result in unacceptable delays in meeting water quality-based requirements and assuring a “level playing field” for industries subject to national effluent guidelines.
4. **Some Crisis Management May Be Unavoidable** – Litigation, court rulings, federal and/or state statutory changes, significant declines in compliance rates (e.g., due to economic hardships), new and unforeseeable environmental insults, possible Endangered Species Act developments, and other uncontrollable events could disrupt even the best operational plans at least to some extent.
5. **Blue Ribbon Committee Process May Fail** – Some observers questioned whether committee members are “burned out” on DEQ workgroup efforts. Some expressed concern that DEQ leadership may not follow through on the committee’s recommendations. Some said that members do not necessarily know or trust one another sufficiently to reach consensus. Several expressed concern that members have insufficient expertise on permits and/or will not consult adequately with their “constituents” to ensure buy in on Committee recommendations. The Legislature will likely need to approve the more significant recommendations of the Committee and such approval is uncertain.
6. **Conflicts of Interest** – While some permittees (and associations) are willing to assist in workshops/training and guidance/template development, their involvement could lead to real or perceived conflicts of interest if not handled properly.
7. **Impact of new EPA Data Quality Guidelines** – This is currently an unknown.

8. **Nonpoint Source Problems** – No matter how well DEQ does at addressing point source issues, water quality may not improve without better nonpoint source controls.

[For discussion at later meetings...]

9. **Funding Uncertainty May Continue** – Some permittee associations may oppose fee increases under any circumstances. General revenue funding increases may be unrealistic given budget shortfalls. Federal funding may decline due to federal deficits.