



Permitting for Environmental Results (PER)

NPDES Profile: Oregon and Indian Country

PROGRAM RESPONSIBILITY

State of Oregon: NPDES authority for base program, general permitting, federal facilities, and pretreatment

EPA Region 10: NPDES authority for biosolids

EPA Region 10: NPDES authority for all facilities in Indian Country

Program Integrity Profile

This profile characterizes key components of the National Pollutant Discharge Elimination System (NPDES) program, including program administration and implementation, environmental outcomes, enforcement, and compliance. EPA considers profiles to be an initial screen of NPDES permitting, water quality, enforcement, and compliance programs based on self-evaluations by the States and a review of national data. EPA will use the profiles to identify program strengths and opportunities for enhancements. For more information, please contact Annette Liebe, Oregon Department of Environmental Quality, (503) 229-6792, or Mike Lidgard, EPA Region 10, (206) 553-1755.

Section I. Program Administration

1. Resources and Overall Program Management

The State of Oregon:

The State of Oregon was authorized to administer the NPDES program in September 1973. The State was authorized to regulate federal facilities in March 1979, the NPDES pretreatment program in March 1981, and the NPDES general permits program in February 1982. EPA approved the most recent update to the Memorandum of Agreement (MOA) on May 3, 1984. EPA Region 10 (the Region) issues permits to facilities located in Indian Country within the State and biosolids facilities. As of March 2005, there are 860 facilities in the State of Oregon covered by NPDES permits. Of these, 362 are covered by individual permits issued by the State, consisting of 77 major facilities and 285 minor facilities.¹ Four are covered by individual permits issued by EPA Region 10, and 494 are covered under 11 general permits.² EPA oversees over 500 biosolids facilities in the State.

¹ The National Data Sources column of the Management Report, measures #1 and #2, show 76 major facilities and 305 minor facilities covered by individual permits. These values are based on PCS data as of June 30, 2004. The above values are based on Oregon's Water Quality Source Information System (WQSIS). (See section I.7 for a discussion of the discrepancies between these systems.)

² The National Data Sources column of the Management Report, measure #3, shows 576 facilities covered under general permits, based on data from ePIFT as of March 2004. The above value of 494 is based on WQSIS data.

The Oregon Department of Environmental Quality (DEQ) is organized through a central Headquarters office located in Portland and three decentralized Regional offices. The Headquarters office is responsible for statewide functions such as: issuance of general permits, oversight of Regional offices, issuance of statewide policies and guidance, interacting with the legislature, developing State regulations, and formal enforcement actions (civil penalties). The Regional offices are responsible for issuing individual permits, assigning coverage under general permits, and taking informal enforcement actions, including referring violations to DEQ's Office of Compliance and Enforcement (OCE) for formal enforcement actions. Informal actions include notices of noncompliance, letters, phone calls, and compliance assistance. The Regional offices administer and manage their Regional NPDES activities somewhat independently of EPA Headquarters and the other Regions.

In a report developed by DEQ for Oregon's Blue Ribbon Committee, DEQ estimated the resources necessary to operate the Oregon NPDES program to be 64 Full Time Equivalents (FTEs).

Oregon DEQ currently has 59 FTEs to administer the program. This includes resources to administer both the NPDES program and the State Water Pollution Control Facility (WPCF) program (WPCF permits are for facilities that discharge other than to surface water, such as land application for irrigation purposes). The 59 FTEs include 19.5 FTEs for permit writing (12 FTEs for NPDES and 7.5 for WPCF), 5.5 FTEs to implement the NPDES stormwater permit program covering industrial, construction and municipal stormwater discharges, 1 FTE for pretreatment and the remaining FTEs for compliance assessment, technical assistance, enforcement, rule/guidance development, review of facility plans, development and management of data systems, and management and clerical support. The source of funding to support the program is approximately 9% from federal funds, 31% from general funds, and 60% from permit fees.

Oregon DEQ intends to seek funding to gradually add 5 FTEs over the next 2 biennia. EPA is supportive of DEQ's existing efforts to secure additional resources for the NPDES program.

DEQ recently increased its investments in permit writers and inspectors. DEQ initiated periodic meetings with EPA managers and statewide permits staff. Up until recently, training opportunities for permit staff in Oregon were limited. The only training opportunity provided in 2003 was the EPA overview course for new permit writers. However, DEQ has recently increased training opportunities. In December 2004, DEQ sponsored an all-water-quality meeting, during which there were several permits-related breakout sessions. This meeting was followed up in January 2005, when DEQ hosted an Oregon-specific NPDES Permit Course in Portland. In the future, DEQ intends to hold bi-annual permit writers' meetings which will serve as both a policy forum and a training opportunity for staff.

Until recently, DEQ appeared to offer no formal training and little informal training to its compliance and enforcement staff. The Wastewater Improvement Team (WIPT) report of June 2001 recommended designation of a State training coordinator, development of a mentoring program, and permit writers' meetings. (The purpose of the WIPT report was to identify ways to improve DEQ NPDES program efficiency and effectiveness. The report was produced by senior NPDES DEQ permit writing staff.) Similarly, Region 10's Oregon Program Review identified the need for additional permit writing and enforcement training opportunities.

EPA Region 10:

EPA Region 10 currently manages permits for 4 minor facilities in the State of Oregon, all through individual permits. The scope of the program includes: permit issuance, consultation with Tribes, Endangered Species Act (ESA) consultation, compliance and enforcement, and data management for these facilities; National Environmental Policy Act (NEPA) compliance for new sources; stormwater programs in Indian Country; administration of the biosolids program; and oversight of the State-administered NPDES program.

Since the Region is the NPDES program authority for two states, Idaho and Alaska, there are very few resources left for Oregon program oversight. The State sends copies of its draft permits to EPA for review; however, the Region only reviews about six permits per year due to limited resources.

The Region conducted a comprehensive review of DEQ's NPDES program in 2003. The review was conducted as part of the Region's responsibility, under the Clean Water Act (CWA), to conduct oversight of authorized State NPDES programs. The program areas reviewed were NPDES permits (including permits for stormwater) and enforcement. The biosolids program was not evaluated because DEQ does not administer an EPA-approved biosolids program. Also, the pretreatment program was not addressed. The six primary review findings include: excessive permit backlog, lack of statewide program guidance and oversight, lack of water quality-based limits in permits, inadequate data management system, over-reliance on Mutual Agreement and Orders (MAOs), and failure to calculate economic benefit when assessing penalties. (MAOs are DEQ's equivalent to the administrative compliance orders EPA issues pursuant to CWA section 309(a) and (g).) These and other review findings will be discussed in the appropriate sections of this profile. The report was issued in January 2005. EPA and the State are developing an implementation plan to address the finding of the report.

EPA conducts inspections of facilities located in Indian Country and within the State on a case-by-case basis. For example, the Region may choose to perform an inspection at a facility when there have been citizen complaints or at a national or regionally targeted industrial sector. The Region performs inspections when the State requests assistance and to evaluate DEQ inspection procedures.

Resources to manage four EPA-issued permits and conduct oversight are pulled from the NPDES Regional program resources. See the Alaska and Idaho profiles for a complete description of Region 10 NPDES program resources.

2. State Program Assistance

EPA Region 10:

Oregon has authority to administer all elements of the NPDES programs except biosolids. At this time, DEQ is not seeking NPDES program authority for biosolids. In recent years, Regional support for helping States obtain program authority has focused on Idaho and Alaska.

3. EPA Activities in Indian Country

EPA Region 10:

EPA Region 10 conducts Tribal consultation and coordination with regard to Executive Order 13175, Region 10 Tribal Consultation Policy, and NPDES Permit Unit consultation procedures.

As of April 17, 2001, the NPDES Permits Unit has established consultation procedures for actions taken by the Region that affect Indian Country, as well as Tribal resources that are outside of Indian Country (including treaty-protected usual and accustomed hunting and fishing areas and subsistence areas under approved State and EPA programs). The NPDES Permits Unit consults with Tribal governments during the following: development of the NPDES three-year Unit Plan (which includes the prioritization list of permits to be issued); development, issuance, reissuance and modifications of NPDES permits pursuant to CWA sections 402 and 405; approval and authorization of an NPDES program pursuant to CWA sections 307, 402, or 405; and development of EPA-led environmental assessments (EAs) and environmental impact statements (EISs) for new source NPDES permits, wastewater treatment construction grant projects, and special appropriation act funding projects pursuant to NEPA.

During the development of the NPDES three-year Unit Plan, the NPDES Permits Unit Manager requests that all Tribal environmental departments in Washington, Oregon, Alaska, and Idaho provide a list of wastewater discharge facilities that the Tribes view as priorities for permit issuance/reissuance or indicate interest in consultation on the list within 30 days of notification. A draft prioritization list and a request for additional input are requested within 30 days of notification for all Tribes that indicated interest in consultation. Upon completion of consultation, a copy of the final permit prioritization list is provided to all Tribal environmental departments.

Prior to the development of NPDES permits or modifications, the NPDES Permits Unit sends a letter to those Tribal environmental contacts that have expressed an interest or are identified by the EPA Tribal coordinator as possibly being affected by the action. The letter identifies the facility, receiving water, and EPA permit writer, and requests that Tribes respond if they are interested in the permit action and provide any initial concerns with the action within 30 days of notification. The permit writer, upon request or when appropriate, will meet with Tribal environmental staff regarding the action; these meetings generally occur at the same time as site visits or by conference call. The permit writer provides all interested Tribes with preliminary draft copies of the permit and fact sheet three weeks prior to public notice and requests the Tribes provide feedback prior to public notice. Interested Tribes are then provided with copies of the public notice, draft permit and fact sheet at the commencement of the public notice period for review and comment. When requested by a Tribe, the permit writer will prepare a separate response to the Tribe's comments and send it to the Tribal government.

During the approval and authorization of a NPDES program, affected Tribal governments, identified by the Region 10 Tribal coordinators, will be notified of those proposed State and Tribal NPDES program approvals and authorizations by the Director, Office of Water and Watersheds via letter and asked to submit comments.

For Tribal consultation with regard to NEPA, Tribal environmental management, identified by the Region 10 Tribal coordinators, will be notified by the NPDES Permits Unit of the EPA-led EA and EIS activities and request the Tribe(s) input.

Should disputes arise between one or more Tribes and NPDES Permits Unit staff, the parties will strive to address the matter informally at the staff level. In the event that staff is unable to resolve a dispute, the issue will be presented up the chain-of-command who will attempt to resolve the dispute. If the dispute is not resolved, the Regional Administrator will make the final decision after consulting with the elected leader(s) of the federally recognized Tribe(s).

4. Legal Authorities

EPA is conducting a comprehensive review of the State's legal authorities. This review has not yet been completed. As a result, EPA is reserving this section of the profile; when the legal reviews are complete, EPA will update profiles to include the results of the reviews.

There are two active withdrawal petitions in Oregon. They were filed in December 1996 and in February 2001 respectively; both were submitted by the Northwest Environmental Defense Center and deal with issues related to representational standing.

5. Public Participation

An evaluation of the State's legal authorities regarding public participation will be included in the legal authority review. As noted above, the legal authority review section of this profile is reserved pending completion of the legal authority review.

The State of Oregon:

The State of Oregon's public participation policy/requirements for civil penalties, administrative procedures, and rulemaking are set by statute in Oregon Revised Statutes, Chapter 183. Oregon DEQ has public participation regulations under Oregon Administrative Rule (OAR) Chapter 137 and Chapter 340, Division 11. Specific provisions for NPDES permitting actions are located in OAR Chapter 340, Division 45. Oregon DEQ's policy is to include the public in all aspects of the agency's decision-making.

DEQ relies on the DEQ Web site to post water quality documents and data that may be of general interest to the public (see <http://www.deq.state.or.us/wq>). The permits page, found at <http://www.deq.state.or.us/wq/wqpermit/wqpermit.htm>, includes an inventory of all permit holders, including general permittees, and the exact status of their permits (active or expired). The information can also be retrieved by receiving stream. Further, all draft rules, policies and guidance are posted on the Web for comment, and all final rules policies and guidance are similarly posted. Finally, DEQ develops summary "factsheets" about new rules, policies, guidance, and pending permits and posts those factsheets on the Web page.

In addition to Web site postings, pending permit actions are brought to the attention of the public through direct mailing (using either electronic or hard copy, as requested), based on mailing lists that are periodically updated. DEQ last updated these lists in 2004. Public notices for permit actions are not always published in local newspapers. Although DEQ sends out press releases to a variety of newspapers in the geographic area of a facility, they are published at the newspapers' discretion. This was highlighted as a concern in EPA's NPDES Program Review.

In addition to seeking input from the general public, DEQ seeks public involvement through the use of public advisory committees representing the wide diversity of the opinions of Oregonians.

Oregon DEQ has also published an internal document specifically for permitting, the Permit Writer's Public Involvement Guide. The term "public" is not defined in statute or rule; rather, the term "person" is used and means any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

All DEQ regions have similar procedures for receiving and processing NPDES applications and permits. Oregon DEQ staff send letters to the facilities to remind the permittee when applications are due. The reminder letter is a valuable program element that helps the facility to avoid expiration of its permit. Once received by DEQ, the applications are checked by administrative staff and entered into the data base, processed, and forwarded to the permit writer. Relevant permit dates, including the application receipt date, are entered into the Source Information System (SIS) permit database, which is available to the public online. The SIS database is limited to tracking permit dates. Permit compliance data is stored in a separate discharge monitoring system (DMS) data base. These two systems have limited communication capability.

The public has access to all permit records upon request to the State, including fact sheets, permits, correspondence, and compliance and enforcement information. All hard copy permit and compliance files are kept in the DEQ Regional office closest to the geographic location of the facility. As noted above, basic information on existing and pending permits is available on the DEQ Web site. Current permits themselves are not on the Web site although DEQ intends to move in that direction. With some exceptions prescribed by law, every person has the right to inspect public records of a State agency in Oregon. Exceptions may include information held as confidential business information, or specific information that could impact an ongoing enforcement action; such information would be kept confidential until the final outcome of that action was settled.

Oregon public records law requires that all permits and compliance information (other than trade secret information) be made available to the public. While DEQ charges fees for copies of this information, these fees are routinely waived for individuals or members of a public interest organization. The State has no reservations about who is considered public for participation in actions or obtaining information. In 1996, the Oregon Supreme Court held that Oregon's Administrative Procedures Act does not allow for judicial review of environmental permitting decisions when such review is sought by an organization on behalf of its members. The effect of Oregon's restrictions on "representational standing" on the public's ability to fully participate in the NPDES permitting process has been the subject of extensive dialog between DEQ and Region 10.

EPA Region 10:

Pursuant to the Clean Water Act and the requirements contained in 40 CFR part 124, Region 10 strives to ensure that the public has an opportunity to participate in NPDES permitting decisions. The Region uses formal and informal mechanisms to encourage public participation. Formal mechanisms include legal notices and public hearings. Informal mechanisms include public meetings, use of the Internet, and personal communications.

Legal notices are published for draft NPDES permits in one or more newspapers in the vicinity of the discharge. Where public interest is expressed, EPA holds public hearings and/or public meetings.

In conjunction with public hearings, Region 10 sometimes conducts public meetings. These sessions are more informal, with a question-and-answer format. They can be useful in educating the public on specific issues associated with a particular permit and on NPDES issues in general.

In addition to the above mechanisms, Region 10 posts the draft permit and fact sheet on the Region's Web page at <http://www.epa.gov/r10earth/waterpermits.htm> in PDF format. Also, newly issued permits are posted for six months, along with fact sheets and responses to comments. The Region 10 Web site provides links to the Permits Compliance System (PCS) database and State databases for information on all NPDES permits in the Region.

All written comments provided to the Region during the public comment period are considered in establishing final permit conditions. Region 10 provides written responses to comments and sends the responses with the final permit to the permittee and all persons who commented. The response to comments is also posted on the Region's Web page at <http://www.epa.gov/r10earth/waterpermits.htm> in PDF format. The response to comments is also part of the administrative record.

6. Permit Issuance Management Strategy

The State of Oregon:

The State of Oregon reports that, as of March 2005, there are 362 individual NPDES permits, including 77 major and 285 minor (289 counting the 4 EPA) permits. The State of Oregon also reports that its backlog of major permits is currently at 30% (23 permits) and its backlog of minor permits is currently at 24% (69 permits). There are 22 facilities with an application on file awaiting issuance of a new permit. As of April 2005, 494 additional facilities are covered by 11 non-stormwater general permits. Of these, eight of the permits, which cover 299 facilities, are expired.

Oregon DEQ has established permitting priorities on a watershed basis. Oregon DEQ plans to continue this approach and develop a statewide prioritization policy for permit issuance and compliance through a watershed based management approach. Oregon DEQ believes that this approach would coordinate permit issuance, compliance, monitoring, and total maximum daily loads (TMDLs).

Until 2005, Oregon did not have a statewide permit issuance plan or an accountability system to manage permit issuance. Each region was responsible for development of permit issuance plans. The EPA Oregon Program Review found that the degree of planning for permit issuance and development of systems to track permit dates or other accountability systems varies widely among the regions.

Oregon DEQ has made an effort to address the backlog problem by making permit issuance a high priority, developing some Regional permit issuance plans, shifting resources, seeking additional resources, and identifying bottlenecks in the permit issuance process. For example, DEQ has decoupled the permit reissuance process from the TMDL development process in order to make continued progress against the backlog. In 2003, the State formed a Blue Ribbon Committee to address permit issues including the backlog; the final report was issued on August 10, 2004. The Region supports the efforts made by Oregon to address its backlog; however, the backlog of expired permits and the ability to

achieve national backlog targets remain a significant concern to EPA. Oregon DEQ will need to continue to improve permit issuance in order to meet national permit backlog goals. A comprehensive plan needs to be developed to reduce the backlog and to maintain it at the national target. Through quarterly reports, EPA will continue to track DEQ progress towards reducing the backlog.

Table 1: Percentage of Facilities Covered by Current Permits in Oregon
(State-issued permits)

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities	32%	74%	33%	76%	40%	83%	43%	84%
Minor Facilities Covered by Individual Permits	35%	69%	27%	73%	26%	79%	22%	81%
Minor Facilities Covered by Individual or Non-Stormwater General Permits	N/A	N/A	N/A	N/A	74%	85%	39%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (Values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.) The numbers presented for 2003 may underestimate the actual facilities covered, particularly for minor facilities covered by general permits; this is because the data presented in the table are based on national databases, Oregon uses a state database to track permits and data are not consistently transferred to the national databases.

EPA Region 10:

The Region manages four facilities in the State of Oregon through individual permits; all are minor facilities in Indian Country. As of January 2005, one of these NPDES permits (i.e., 25% of EPA-issued permits) is current. One permit has been expired for over 10 years; one permit has been expired for less than 2 years; the remaining facility has an NPDES application on file, but no permit has ever been issued. Currently, the Region has no permitting strategy for biosolids facilities.

When the Region developed the current operating plan covering calendar years 2003 through 2005, the goal was to reduce the backlog of total facilities in Oregon to 0% by the end of 2004. This goal was based on the expected availability of 11 experienced permit writers. However, as expressed under section 1 above, the experience levels of permit writers and the increase in resources to State oversight have severely affected the Region's ability to reach the national backlog goal of 10% for 2004 within the State of Oregon. It is now the Region's goal to reduce the backlog of total facilities permitted by the Region in Oregon to 0% by the end of 2005. The program will be utilizing various means, including streamlining efforts, to move the permit issuance process forward in an expeditious and efficient manner.

Table 2: Percentage of Facilities Covered by Current Permits in Oregon
(EPA-issued permits)

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities	N/A	74%	N/A	76%	N/A	83%	N/A	84%
Minor Facilities Covered by Individual Permits	N/A	69%	N/A	73%	33%	79%	33%	81%
Minor Facilities Covered by Individual or General Permits	N/A	N/A	N/A	N/A	33%	85%	33%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (The values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

7. Data Management

The State of Oregon:

Oregon has four information systems to manage implementation of its NPDES program (WQSI, DMS, CCD, and the Enforcement database). These systems are in various stages of development. The systems are designed to eventually communicate with each other. Oregon DEQ does not use PCS. A summary of Oregon's information systems follows:

1. Water Quality Source Information System (WQSI) - WQSI stores facility identification and administrative permit information for all Oregon Water Quality facilities and permits. DEQ uses this system to track all NPDES permits, permit applications and permit activity, as well as pretreatment information. Data entry is manual. WQSI is used to feed permit and facility information to the DMS/DMR system. The WQSI database, and its predecessor have been in use for many years in Oregon and is available to the public via the DEQ Web site. WQSI is a Microsoft SQLServer database with a Visual Basic 6.0 User Interface.
2. Discharge Monitoring System (DMS) - DMS is intended to store information on permit features, schedules, permit limits, required monitoring, and DMR data for individually permitted facilities. DMS is deployed and operational as of January 2005. Oregon DEQ has entered permit data for all of Oregon's major facilities into the state DMS system as of July 2005 and plans to enter permit data for minor facilities by fall of 2005. DMR data will be entered once permit data entry is complete. DMS has a Web-based user interface (ASP.NET) and uses Microsoft SQLServer as its database. DMS contains an electronic DMR submission component. This component has been tested, but has not been deployed. DMS is designed to eventually have ties to the other Oregon NPDES databases. DMS will use the WQSI system as the source of facility identification and administrative permit information. The CCD is currently being Beta tested and deployment will begin in August of 2005, immediately replacing several older small databases in Oregon DEQ's Office of Compliance and Enforcement. Several additional deployment steps will follow, each integrating the CCD with one or more major Oregon programs, including those of the Water Quality Division.

3. Notice of Non-compliance Database (NON) and Centralized Compliance Database (CCD) - These databases track pre-enforcement status, from the triggering event through either resolution (from completed remedial action) or referral to enforcement. The NON database is currently in use; it is scheduled to be replaced by CCD. The CCD will contain violation information (including inspection information), specified remedial action, status, and keys to permit and facility identification data in other systems. The NON database in current use contains similar information, though not as well linked to data in Oregon's Water Quality and other major program databases. The CCD has some additional tickler and document generation functions to assure consistency in handling pre-enforcement work. Oregon NPDES program records in the CCD will be linked to the DMS via triggers generated by the later system, and to WQSIG for WQ permit and administrative information. The CCD will be a Microsoft SQLServer database with front ends built into several of DEQ's major program databases, and an additional generalized MS Access Projects front end which will be used by Oregon's NPDES program. The NON database is a shared, server-based Microsoft Access database.
4. Oregon DEQ's Enforcement Database - This system is used to track Oregon's civil and criminal enforcement actions and Oregon's timeliness in pursuing and completing them. It contains information such as enforcement status, source identification information, SEPs, schedule and accounting information, violation class, and penalties. Data entry is manual and non-duplicative of NON (CCD) database information. The Enforcement database contains foreign keys to link it directly to the NON/CCD database, and indirectly (via the NON/CCD) to the other Oregon NPDES program databases (WQSIG and DMS). This system uses Microsoft Access screens and reports, pulling data from the Oracle database and supplementary MS Access tables.

In addition, the State tracks and manages the following information:

1. SSO/CSO - Some separate sewer overflows (SSOs) and combined sewer overflows (CSOs) are tracked manually. The State has plans to begin tracking SSOs/CSOs for the 2007 Integrated Compliance Information System (ICIS) target.
2. Stormwater - There is no electronic format for tracking stormwater activities. If the facility has a permit, the permit information is tracked in the SIS data system. However, Oregon cannot query the database specifically for stormwater activities.
3. Biosolids - There is an existing database that is not well used. Some of the biosolids tracking is in DMS. A new biosolids tracking system is being developed for the 2007 ICIS target.

EPA's 2003 Oregon Program NPDES Program Review found Oregon's compliance and enforcement tracking data management system to be inadequate. Since the Program Review (conducted in 2003), Oregon has made progress in developing data management systems. The Region hopes that once the new data management systems are up and running to their full capacity, many of the concerns raised by the Program Review will be resolved. Inadequacies of Oregon's data management system identified in the program review included the following: (1) compliance officers must do a time-consuming comprehensive file review to ensure that all violations are included in the case development package; (2) EPA's OCE is unable to ensure that all violations are being addressed through the proposed enforcement action; (3) while the current system successfully tracks permit dates, it is unable to track

compliance with permit conditions over time. As a result, DEQ, EPA, and the public are unable to readily determine the overall compliance of NPDES-permitted facilities in Oregon.

Oregon DEQ does not enter data to PCS. Limited PCS data for major facilities was previously entered by EPA, but ceased September 30, 2004, due to a lack of resources.³ As a result, EPA is unable to use PCS to document Oregon's activities, oversee the Oregon NPDES program, or report results. Region 10 continues to generate and distribute the Oregon quarterly noncompliance report (QNCR). However, since data are no longer entered into PCS, the system generated SNC compliance status and violation data displayed on the QNCR and on the Enforcement and Compliance History Online (ECHO) public access Web site are not complete or accurate.⁴ Neither are results data pulled from PCS on State activities (such as inspection and enforcement). Until the Oregon database is communicating with PCS, NPDES activities in Oregon must be directly reported by Oregon. Once ICIS-NPDES is complete, Oregon will interface with it to provide data from the State's data systems.

DEQ has committed to integrate their data system with PCS in the future. The Oregon Performance Partnership Agreement (PPA) requires that in the event Oregon does not develop a data system that integrates with PCS during the term of the agreement (July 1, 2004 through June 30, 2006), DEQ will begin direct data entry. Oregon applied for funding to continue PCS data entry in fiscal year (FY) 2004 through a Multimedia State and Tribal Assistance Grant (STAG), but was not selected as a recipient of the grant. The Region has encouraged Oregon to apply for the EPA OECA FY2005 STAG grant to assist with PCS data entry and to continue to work with EPA Headquarters on IDEF (Interim Data Exchange Format) transition. The region (Office of Water and Watersheds (OWW) and OCE) has not, as of this date, discussed the use of CWA section 106 grant funding as a possibility to alleviate the problem.

All data entry is manual. Duplication in 2002 will be eliminated by links between the major systems. The State performs regular queries on the permit tracking system to find missing data elements. A massive data clean up effort was done as part of the State's modernization effort. The DMS system runs internal quality assurance reports for missing data elements. Exceedances are checked/verified by hand.

Oregon DEQ will be responsible for improving PCS data quality for State-authorized permittees in Oregon to support PCS data migration in either the 2nd release of ICIS-NPDES for the remaining PCS direct entry user States scheduled for June 2006 or the 3rd release of ICIS-NPDES for PCS non-direct entry user States (using xml batch submissions via cdx and the national environmental information exchange network) scheduled for June 2007.

Oregon DEQ collects latitude/longitude data for the center of the facility and a latitude and longitude identification (LLID) for the facility's discharge. The LLID consists of the latitude and longitude at the mouth of the receiving stream for the discharge and an index following the latitude and longitude to identify the distance in miles from the mouth of the receiving stream to the discharge. Oregon DEQ has developed several mapping and location tools to assist the permit writer in determining if latitude and longitude and LLID information is correct. These include a "Location Improvement Tool" that compares

³ The Management Report, measure #17, shows a DMR entry rate of 100%. This is for the quarter July 1 to September 30, 2003 and is not representative of Oregon's data entry rate since EPA has ceased data entry.

⁴ This also applies to Management Report measures #32 through #38.

maps with addresses or latitude and longitude, an “LLID Identifier” that allows users to enter a facility’s address or latitude and longitude and view the surrounding waterbodies to find an LLID, and a “Facility Profiler” that searches other DEQ program databases for facility information.

EPA Region 10:

The Region uses the national PCS database as its NPDES management tool. In addition to the national PCS database, the Region uses the following data systems to manage the NPDES program: ePIFT to track the permit backlog and report it to EPA; ECHO; Online Tracking Information System (OTIS); permit prioritization database and spreadsheet forecasting tool for permit planning; database to track permit applications; database to track public notices and other newspaper advertisements; and database to track permit issuance progress.

The Region currently does not enter all the Water Enforcement National Database (WENDB) data elements. The Region is deficient in entering the following WENDB data into PCS for all biosolids and EPA-authorized facilities: enforcement action data, single event violation data, and pretreatment performance summary. The Region recently developed a PCS plan for improvement, which refocuses the Region’s PCS data entry for all Region 10 States to only those permits where EPA is the permitting authority (i.e., Alaska, Idaho, federal facilities and Indian Country in Washington, and Indian Country in Oregon). The region is currently working on improving PCS data quality for the EPA-authorized States of Alaska and Idaho to support data migration in the 1st release of ICIS-NPDES for PCS direct entry user States scheduled for December 2005.

The Region is currently working with the States of Oregon and Washington to assume PCS data management for those facilities where the State is the permitting authority. Until this occurs, PCS data entry for State issued permits in Oregon does not meet the PCS data quality targets. However, the Region is able to provide accurate counts for the number/types of permits issued by the Region in Oregon, EPA enforcement actions, and EPA conducted inspections, because the necessary data to generate these statistics is being entered into PCS in a timely manner.

The Region plans to work with Oregon to encourage the State to seek any available contract/grant dollars, and to aid them in assuming PCS data management via direct PCS data entry or continue to develop the State system(s) and populate it with federally-required data that may be ultimately imported into PCS via IDEF.

The following table provides the categories of WENDB data elements that are required to be entered into PCS.

Table 3: Categories of WENDB Data Elements

Information Type	Major facilities	Minor facilities	
		PL 92-500	Other
Permit Facility Data	✓	✓	✓
Permit Event Data	✓	✓	✓
Inspection Data	✓	✓	✓
Parameter Limits and Pipe Schedule Data	✓		
Significant Compliance Data	✓	✓	
Compliance Schedule Data	✓	✓	
DMR Measurement Data	✓		
Enforcement Action (<i>Enforcement Action Data, Compliance Schedule Data, and Interim Limits Data from all active formal enforcement actions and Enforcement Data from all active informal enforcement actions</i>)	✓		
Enforcement Action (<i>Enforcement Action Data from all active formal and active informal enforcement actions</i>)		✓	
Enforcement Action/Administrative Penalty Order ¹	✓		
Pretreatment Approval ²	✓	✓ ³	✓ ³
Single Event Violation Data	✓	✓ ³	✓ ³
Pretreatment Compliance Inspection (PCI)/Audit	✓	✓ ³	✓ ³
Pretreatment Performance Summary	✓	✓ ³	✓ ³

1. These data elements are required specifically for administrative penalty orders. Entry of these data elements is only required for EPA actions.

2. Pretreatment program required indicator data element PRET.

3. Only for minor POTWs that are pretreatment control authorities.

The Region enters the latitude and longitude data from permit applications into PCS. In general, the latitude and longitude data are not verified.

The Region does not use data entry quality control protocols for data entered into the national PCS database. The Region does perform a periodic PCS cleanup to remove or inactivate entries for facilities that are no longer discharging pollutants to waters of the United States. To ensure that data is reported in a timely manner, the Region relies on PCS to flag DMRs that are not entered or submitted. If DMRs are late, the first step is to contact the facility. If the DMRs were not submitted, then the NPDES Compliance Unit prepares an appropriate enforcement response.

Section II. Program Implementation

1. Permit Quality

The State of Oregon:

Oregon permit writers are expected to review NPDES permit applications, discharge monitoring reports, and other relevant data to determine pollutants of concern. According to Oregon's permitting procedures, a reasonable potential analysis is to be conducted using the procedures in DEQ's 2004 Draft Internal Management Directive on conducting reasonable potential analysis and calculating water quality-based effluent limits (WQBELs), including whole effluent toxicity (WET) limits and testing. (This document is expected to be final in 2005.) The internal management directive requires that WQBELs be explained in the Fact Sheet/Permit Evaluation Report, and that effluent limits be established for all pollutants that have a reasonable potential to exceed water quality standards. If there is a technology-based effluent limit for a pollutant, the fact sheet is to include a comparison of the technology and water quality-based effluent limits; the more stringent of the two is then placed into the NPDES permit.

During EPA's NPDES Program Review of Oregon's program in 2003, EPA found many discrepancies between Oregon's permitting procedures and how they actually implement the NPDES program (highlighted below). Most of the information used to reach the findings on permit quality was gathered during reviews of permit administrative records. EPA spent a week in each of the three Regional offices reviewing 55 NPDES permit records. Information gained through entrance interviews with the Regional managers and permit writing staff also contributed to the findings made below.

Summary of EPA's NPDES Program Review Findings

- Permit quality has improved since the last comprehensive EPA program review in 1995. Oregon DEQ has made some progress in issuing permits that are protective of Oregon water quality standards although more needs to be done to improve permit quality.
- Water quality-based permitting procedures are not applied consistently across the State. The frequency of water quality-based permits also varies across the regions. Water quality-based permitting needs to be a routine element of industrial permits along with the determination of technology-based limits.
- Publicly-owned treatment works (POTWs) are not routinely evaluated for their potential to contribute to an exceedance of water quality standards for parameters commonly associated with treated domestic waste such as: ammonia, pH, and all metals for cities with a pretreatment program.
- Receiving water data is not generally available nor is it required to be collected as a condition of the permit for analysis of water quality impacts.
- WQBELs are not always put in permits when a facility is found to have a reasonable potential to cause or to contribute to an exceedance of a standard.

- Documentation of permit conditions in the administrative record, especially fact sheets and response to comments, needs to be improved.
- Mixing zones are often outdated.
- Recently-issued pulp and paper permits meet federal technology-based requirements.
- For some industrial permits, technology-based effluent limitations (TBELs) for industrial permits are outdated and do not reflect current production at the facility.

Oregon DEQ has committed in the current PPA (June 2004) to develop and implement a work plan to address the findings of the NPDES Program Review. The State has also committed to develop and implement a plan for the development of statewide policies, guidance, and tools for consistency in program implementation throughout the State, and to update its reasonable potential, and water quality-based effluent guidance and tools.

DEQ has produced an internal management directive on conducting reasonable potential analysis and calculating WQBELs, including WET limits and testing. This document has been reviewed by Region 10 and is expected to be final in 2005. In addition, DEQ has made progress on a draft internal management directive on establishing appropriate mixing zones. In the future, DEQ intends to produce similar directives on at least the following topics: using effluent guidelines, establishing appropriate monitoring conditions in permits, imposing water quality criteria for bacteria, addressing sanitary sewer overflows in permits, and documenting permit decisions in evaluation reports (fact sheets).

In addition to establishing clear and consistent protocols for issuing permits, DEQ has increased its investments in the permit writers and inspectors. DEQ has initiated periodic meetings with EPA managers and statewide permits staff. Through an EPA grant, DEQ recently hosted an Oregon-specific NPDES Permit Course in Portland. The course helped establish a common understanding on how the permit program should be administered and raised a number of issues that will ultimately be addressed through the issuance of additional internal management directives.

Oregon DEQ has developed a draft Reasonable Potential Internal Management Directive that addresses WET for the State. (The directive also addresses how to conduct reasonable potential analysis and calculate WQBELs.) The public comment period closed January 2005; EPA provided comments based on national guidance. The draft policy addressed reasonable potential, acute (lethal) and chronic (sub-lethal) toxicity. The final policy is expected in 2005. The State currently does not have a WET coordinator.

In EPA's 2003 Program NPDES Program Review, WET data and toxic pollutant scans were seldom found in the Oregon NPDES permit records, which are required by federal regulation.

EPA Region 10:

Since 1995, all permits issued by the Region contain comprehensive requirements, including water quality-based effluent limits, whole effluent toxicity requirements, best management practices, quality assurance plan requirements, special effluent sampling, receiving water monitoring, pretreatment requirements, and special studies.

The Region ensures appropriate water quality and technology-based permitting through a variety of measures. These measures include training, mentoring, and technical leads (e.g., State water quality standards, water quality permitting, modeling, WET, industrial sectors, and the like).

Region 10 has a well-established implementation program for WET. Region 10 has relied on the guidance jointly developed by Region 10 and Region 9 to implement a WET Program. Region 10 worked with Region 9 on the guidance for State and Regional permit writers. The guidance included sections on determining what kind of WET testing conditions should be included in permits, and made recommendations on when testing should be included, as well as the types of tests and species. The guidance made recommendations for both marine and freshwater testing. Since that time, EPA is developing a national guidance on reasonable potential for WET, which Region 10 has reviewed and provided comments. The Region routinely includes reasonable potential analyses for WET in most major permits.

2. Pretreatment

The State of Oregon:

EPA authorized the Oregon DEQ to implement its State Pretreatment Program on March 12, 1981. Oregon DEQ requires every POTW with significant industrial users (SIUs) to develop and implement a pretreatment program. The State is the approval authority for the pretreatment program. Currently, twenty-four POTWs are required to implement approved pretreatment programs. One other community is in the process of developing a new program. As of April 2005, there are 300 permitted SIUs in Oregon (134 of these are categorical industries). 98.4% of SIUs are addressed by control mechanisms that implement applicable pretreatment standards and requirements (including categorical standards).⁵ Local programs have continuous efforts to update their SIU inventories. DEQ verifies these inventories during program audits and, in the case of non-discharging SIUs, randomly spot checks these non-discharging facilities.

Currently, Oregon DEQ is committed to audit approved pretreatment programs at least once every five years. DEQ did experience a short-term gap in its audit efforts in 2003 due to turnover in the pretreatment coordinator. This gap has been subsequently eliminated. Oregon DEQ's standard practice is to transmit pretreatment compliance inspection (PCI) or pretreatment compliance audit (PCA) reports within 30-45 days of a field inspection or audit. Oregon DEQ requires the POTW to correct minor violations and take required and recommended actions within 30-60 days of receipt of the report. All violations are issued at least a Notice of Noncompliance as required by OAR Chapter 340, Division 12, Enforcement Procedure and Civil Penalties. Significant violations of 40 Code of Federal Regulations (CFR) part 403 may result in issuance of a civil penalty or order within 3-6 months. A follow-up inspection is then scheduled to ensure compliance. Timeframes to achieve compliance vary, depending on the magnitude and extent of the issues. All annual reports are now reviewed shortly after they are received. Deficiencies are identified to the local program. DEQ is actively working to improve the DEQ pretreatment Web page.

⁵ The National Data Sources column of the Management Report, measures #9 and #24, show 235 SIUs, with 98.7% having control mechanisms, based on PCS data as of June 12, 2004. The values above are based on Oregon's WQSI database as of April 25, 2005.

EPA Region 10:

EPA Region 10 oversees the Oregon Pretreatment Program by monitoring audit reports from the Oregon DEQ. In addition, Region 10 provides outreach and technical support to the pretreatment coordinator, who is relatively new to the program. There are currently no pretreatment programs in Indian Country or at federal facilities in Oregon which require NPDES permits. Currently, DEQ is committed to audit approved pretreatment programs at least once every five years. DEQ is collaborating with EPA to improve the interface between the State and the national database systems.

3. Concentrated Animal Feeding Operations

The State of Oregon:

EPA has been informed that Oregon intends to transfer the authority to administer the concentrated animal feeding operations (CAFO) portion of its NPDES program to the Oregon Department of Agriculture (ODA). Pursuant to 40 CFR part 124.62(c), ODA is not directly authorized to administer a CWA CAFO program until this NPDES program revision is approved by EPA. ODA currently operates the program under separate agreements with EPA and DEQ. The ODA implements the CAFO program for DEQ. There are 580 permitted animal feeding operations (AFOs) in Oregon; 103 large CAFOs, 187 medium CAFOs, and an additional 290 State-regulated AFOs.⁶ All of these facilities are currently registered under the State's NPDES general permit.

Oregon has revised its regulations to be consistent with the new CAFO rule. Oregon has issued a CAFO general NPDES permit that went into effect October 1, 2003. This permit incorporates all the new federal requirements specified in EPA's CAFO rule. In October 2003, the State's regulatory revisions, including the general permit, were appealed. The appeal was resolved in December 2004. The State made revisions to its regulations and permit to address the appeal (e.g., public availability of the nutrient management plans (NMPs)). The State revisions adopted in October 2003 reflected technical standards outlined in the new federal CAFO rule. Oregon has not yet submitted the program modifications described in this paragraph to EPA for approval pursuant to 40 CFR part 124.62.

Since ODA has not applied for NPDES authority, DEQ issues the NPDES permit and ODA implements it by registering facilities and conducting compliance activities. This permit was developed with guidance from representatives of affected industries, interested citizens, participating agencies, and EPA. The permit requires that all permitted facilities develop an NMP. There are currently 194 NMPs submitted to ODA. Large CAFOs were required to complete and submit their NMPs to ODA by October 1, 2004; medium CAFOs must complete and submit their NMPs to ODA by October 1, 2005; and State-regulated AFOs must complete and submit their NMPs by July 1, 2006. ODA reviews and approves all NMPs. All NMPs must be implemented by December 31, 2006. ODA has focused its efforts to assist large CAFOs in completing their NMPs. Education efforts directed at this portion of the permitted community began in February 2004 and continued through the October due date. ODA has prepared and distributed the minimum required elements of a NMP to all permitted facilities.

⁶ The National Data Sources column of the Management Report, measure #11, shows 70 CAFOs. This value was based on an estimate made in early 2004 that included only large CAFOs. The definition for this measure is CAFOs that will require permits based on the February 12, 2004 revised federal regulations, which includes large and medium CAFOs.

The permit includes requirements based on both effluent limitation guidelines spelled out in each NMP and water quality standards. Each CAFO's NMP directs the facility to employ a specific set of Best Management Practices (BMPs) to address site-specific conditions at the facility. The NMP should list the BMPs and the water quality standard applicable to surface and ground waters present in the area of the farm operations. The NMPs must also address the nine minimum standards contained in the final CAFO rule.

ODA plans to review and approve all NMPs submitted by permitted facilities. This approval process will be completed by ODA's Livestock Water Quality Specialists (LWQS). The six specialists will conduct a minimum of one annual inspection per facility per year. An important portion of that inspection will include review of NMP operations. The LWQS will review records of actual operation of NMPs as a performance gauge. NMPs are designed to be dynamic documents and can be modified if desired outcomes are not achieved. Specific information used by LWQS to measure and evaluate NMP operation include soil sample results, surface and ground water quality sample results, manure, litter and process waste water analysis results, crop yield, and quality analysis results and review of annual record keeping of several operational portions of the NMP.

NMPs may be developed by certified planners (Natural Resources Conservation Service certified), but ODA does not require plan development by a certified planner. Approximately 70% of the NMPs in ODA's database have been developed by a certified planner or under the supervision of a certified planner.

The ODA inspects CAFOs at least once per year. ODA also performs complaint, follow-up, education, and plan review inspections. A permitted facility may receive more than one inspection per year, depending on compliance history and other factors. The basic level of inspection for all CAFOs is one routine inspection per year to determine permit compliance. Facilities that are not in compliance will be cited and revisited (through follow-up inspections) to determine the progress and outcome of required corrective measures.

Facilities are also inspected in response to citizen complaints. Facilities that are in compliance with permit conditions receive a "Facility in Compliance" inspection report. Facilities with operations that concern inspectors, but are not violating permit conditions at inspection, receive a "Water Quality Advisory" inspection report. Facilities that violate permit conditions receive a "Notice of Noncompliance" or a "Notice of Noncompliance/Plan of Correction," depending on the time required to bring the facility back into compliance.

EPA Region 10:

Within Oregon, EPA is the permitting authority for CAFOs in Indian Country. As part of Region 10's oversight responsibility, Region 10 inspects AFOs on a case-by-case basis to ensure that facilities are in compliance with the new CAFO rules. The actual number of AFOs on Indian Country is not known at this time, but it is estimated to be limited to a few large CAFOs. Because of the small number of facilities, the Region may consider issuing individual permits to the facilities instead of a general permit.

EPA has worked with Oregon as it revised its regulations and general NPDES permit for CAFOs for consistency with the new federal requirements including the nine minimum elements.

4. Stormwater

The State of Oregon:

Including a statewide permit for the Oregon Department of Transportation, DEQ manages its stormwater program through seven statewide general permits for industrial, construction, and sand and gravel operations, including a watershed-based industrial stormwater permit for facilities discharging to the Columbia Slough. (The Columbia Slough Stormwater General Permit is based in large part on a completed TMDL. It contains additional pollutants that the other general stormwater permits do not.) Municipal discharges are permitted through six individual permits to “Phase I” municipalities and a statewide permit issued to the Oregon Department of Transportation.

Oregon DEQ makes strategic choices to administer the NPDES stormwater program and leverage its limited staff resources. For example, the DEQ 1200-C permit for construction-related discharges (issued in early 2001) was written such that it automatically applied to “small construction sites” as of December 2002, in compliance with the federal “Phase II” stormwater regulations, thus allowing DEQ to avoid issuing a separate construction general permit for sites disturbing 1-5 acres. DEQ has also elected to use MOAs with local governments to share administrative responsibilities (and associated permit fees) for the industrial and construction permit programs. These agreements allow DEQ to focus its inspection and compliance staff resources on the highest priority sites, while maintaining its full NPDES permitting and enforcement authority. The State’s SIS database tracks stormwater dischargers.

The State reissued six individual permits for discharges from “Phase I” municipal separate storm sewer systems (MS4s) in March 2004, but has recently granted a public petition for a 60-day reconsideration of these permits on issues concerning compliance with Oregon land use and water quality laws. DEQ hopes to modify these MS4 permits by the end of 2005 to address the issues raised by the petitioners.

Approximately 18 smaller municipalities are required to obtain permits as required by the federal “Phase II” stormwater regulations. In light of the reconsideration issues of the Phase I MS4 permits, DEQ plans to issue individual permits for the Phase II “small MS4s” by the end of 2005.⁷

EPA Region 10:

EPA Region 10 retains NPDES permitting authority for stormwater discharges from sources located within Indian Country in Oregon; primarily the construction general permit and the MSGP. There are no municipal organizations located in Indian Country in Oregon that require NPDES stormwater discharge permits. If indeed there were any, EPA would be responsible for permitting them. EPA oversees Oregon’s stormwater program through occasional participation in State-hosted stakeholder meetings, conversations with State staff and management, and discretionary review of State-drafted NPDES permits.

⁷ The National Data Sources column of the Management Report, measure #30, shows the Phase II small MS4 permit as being drafted, based on information as of July 1, 2004. At that time, the State was planning to issue a general permit for these facilities and had drafted that permit.

5. Combined Sewer Overflows/Sanitary Sewer Overflows

The State of Oregon:

There are three CSO municipalities in Oregon (Astoria, Corvallis, and Portland). All three cities are required through administrative orders or permits to develop long term control plans (LTCPs). All three have developed LTCPs (DEQ refers to LTCPs as CSO Facilities Plans); the LTCPs have been approved by Oregon DEQ. One community has completed its CSO corrective action. Another, Portland, is undertaking corrective action which is scheduled for completion in 2011.

Notification/response plans are a requirement for all three permittees with CSOs. The plan is required to include processes to inform citizens when and where CSOs occur. Upon request from DEQ, permittees are required to alert the public about CSO events.

Notification/response plans are a requirement in some NPDES permits for those facilities identified as having SSOs. The permit requires the plan to outline procedures that the facility will take for notifying the public and other appropriate agencies in the event of an overflow. Upon request from DEQ, permittees are required to alert the public about SSO events.

The State has no procedure or guidance in place to identify circumstances under which the State would require a facility to notify public health officials and citizens of CSO/SSO events. The State has not analyzed trends in CSO and SSO reporting in terms of the number/percentage of facilities reporting and the number/percentage of total overflows reported.

EPA Region 10:

The Region has expressed concern with DEQ's practice of authorizing SSOs in NPDES permits and other wet weather practices (allowing additional wet weather outfalls with no permit modification, lack of required monitoring of wet weather outfalls, less restrictive limits during wet weather months). The Region and Oregon have been working to resolve these issues. In addition, EPA will work with Oregon DEQ to develop an internal management directive to address the permitting of SSOs; this is a commitment of the PPA/Performance Partnership Grant (PPG).

EPA does not directly permit any CSO communities in Oregon. EPA does provide oversight to DEQ's CSO program, including review of draft NPDES permits. In addition, EPA is involved with CSO related-compliance issues with Portland.

CSO Events: EPA does not directly permit any CSO communities in Oregon.

SSO Events: Region 10 does not have specific permitting requirements for municipalities to notify the public of SSOs. This is an issue under consideration for the Region.

6. Biosolids

The State of Oregon:

In Oregon, 81% of biosolids are being land-applied or distributed for reuse.

Oregon does not have EPA authorization to administer the biosolids program under 40 CFR parts 501 and 503. The State does have authority under State statute and through administrative rules to administer the land application of biosolids, biosolids derived products, and domestic septage in Oregon. The administrative rules were developed to be consistent with the federal regulations.

Oregon has been pursuing authorization for about four years. Last year, a decision was made to put this effort “on hold” due to an unresolved legal issues. It is unknown at this time when the State will reinitiate pursuit of authorization.

EPA Region 10:

Region 10 implements the 40 CFR part 503 biosolids regulations and additional requirements through individual permits. Region 10 plans to also use biosolids-only general permits. A few of the individual permits have expired.

EPA has no biosolids joint operating agreement with the State of Oregon.

EPA uses a spreadsheet to track submittal of annual biosolids reports.

Section III. NPDES Compliance Monitoring and Enforcement Response

In a separate initiative, EPA's Office of Enforcement and Compliance Assurance (OECA), EPA Regions, and the Environmental Council of the States have developed a tool for assessing State performance in enforcement and compliance assurance to ensure that States meet agreed-upon minimum performance levels and provide a consistent level of environmental and public health protection nationwide. OECA will use the State profiles to focus these efforts and identify areas needing further discussion and evaluation.

1. Enforcement Program

The State of Oregon:

Oregon DEQ relies on a review of DMRs, inspections, and complaint responses to identify noncompliance problems causing environmental/human health impacts. DMR review is currently done manually by staff in one of the Regional offices. In some cases, the Regional inspector and the permit writer are and the same; in other cases, they are different. Inspections are an integral part of evaluating a facility's compliance with their permit. Based on the 2004-2006 PPA between EPA and DEQ, the State intends to inspect approximately 100% of major facilities (77) each year. However, per EPA policy, DEQ reserves the right to substitute minor facility inspections in place of major facility inspections at the appropriate ratio (2:1). They will inspect minor facilities and those covered by general permits as resources allow.

The State's strategy for planning inspections follows an overall watershed cycle schedule. This is designed to focus resources on watersheds which may be impaired and are in the process of developing TMDLs for those watersheds. Inspections are also conducted if complaints or spill reports are received. During inspections the inspector will conduct a file review and compare the analytical data provided to the facility from their laboratory with the facility's DMR to ensure that the data is correctly used and calculations accurately reflect the effluent characteristics. Inspections also typically involve a facility tour and check on the treatment system and other areas which are integral for compliance, such as training logs, file management, and compliance with schedules. Ideally, DEQ's "compliance officers" or inspectors review DMRs to assure that permittees are in compliance with permit requirements and are reporting quality data. Inspectors are trained to notice inconsistencies in reporting information, such as improper calculations, data out of normal range, or other inaccuracies or falsifications. In addition, DMR information is compared during inspections with bench sheets or notebooks of raw laboratory data to confirm that quality data is being reported, and influent and effluent samples are split to compare results from the DEQ laboratory with those of the permittees.

The State has developed a database for tracking effluent data as reported on DMRs. DEQ is currently populating the database with permits and compliance information. This database is intended to interface with the national PCS database and its replacement, the ICIS.

Authority for addressing NPDES violations are provided in the Oregon Revised Statutes Chapters 468 and 468B. Additional details about the kinds of actions DEQ may take in particular circumstances are

found in DEQ Enforcement Rules (OAR Chapter 340, Division 12) and related administrative procedures at OAR Chapter 137 and Chapter 340, Division 11.

DEQ prioritizes compliance activities (such as inspections) on a watershed approach, with the intention of inspecting 100% of major facilities throughout the State and as many minor facilities in a given watershed as resources allow. Facilities that have had noncompliance events which result in serious environmental harm (sewage releases or fish kills), were willful, repeat violators, or degraded water quality below State standards are given the highest priority for inspection or a compliance review. Complaints are also prioritized in a similar manner, but require additional investigation to verify the allegations. By focusing on facilities with poor compliance histories (repeat violators) and on those with problems or potential problems as reported on DMRs, DEQ's strategy focuses on those sources which pose, or have caused, the greatest environmental risk. In addition, the PPA with EPA Region 10 has selected facilities in significant noncompliance as a priority for 2005 – 2006.

DEQ prioritizes enforcement activities based on their Enforcement Guidance for Field Staff, which is DEQ's guidance document for implementing the State's enforcement rules and procedures set out in OAR Chapter 340 Division 12. Division 12 was recently revised and is expected to undergo additional revisions by February 2006. Oregon's enforcement approach is to use an escalating enforcement response over time until the violation(s) is addressed. To begin with, all violations are documented through a warning letter or pre-enforcement notice (formerly called a notice of noncompliance). Those requiring significant follow up or corrective actions are documented in an administrative order. Penalties are sought based on the nature of the violation, the history of the violator, and the significance of the violation's impact on water quality.

The current Division 12 rules establish a penalty-calculation formula based on the "class" and "magnitude" of the violation. The "class" of violation is a determination of the importance of the legal requirement violated to the environment or to the regulatory system. The water quality classifications are listed in OAR 340-012-0055. Class I violations have the highest potential penalties because they are the most important; for example, spills, exceeding water quality standards, unauthorized discharges, or violations of orders or compliance schedules. Class II and Class III violations are less important requirements; for example, failure to submit a report or deliverable on time, exceeding biological oxygen demand (BOD) limits, or failure to meet percent removal requirements. These classification tables are reproduced in the Enforcement Guidance along with the Director's expectation about the circumstances under which each violation will be referred for formal enforcement by the inspector to the OCE. The Enforcement Guidance is designed to ensure that a predictable and consistent enforcement approach is taken in all circumstances statewide, and to ensure that DEQ enforcement resources are allocated to the highest priority violations and violators. Class I violations are "generally" referred immediately for enforcement on the first incidence of the violation. Class II and Class III violations may be referred if there was serious environmental harm, the violation was done willfully, or the violator received a previous Warning Letter for the same violation.

DEQ utilizes both informal and formal actions to correct violations. Informal actions include working with a facility or municipality to resolve the cause of the non-compliance event, and sending either warning letters or pre-enforcement notices. If these methods are not successful, or inappropriate because of the severity of the violation or circumstances of the violator, DEQ issues Compliance Orders and Notices of Assessment of Civil Penalties. After issuing a penalty or order, DEQ meets with the facility

and often settles the case with an MAO. An MAO may also be negotiated without a prior penalty or order and DEQ often does this for less significant violations that necessitate implementation of a long compliance schedule. MAOs may contain an enforceable compliance schedule and interim limitations, and may allow alternative compliance points if a permit was violated. An MAO may settle past or future violations with or without penalties and it creates a fine or stipulated penalties if the conditions of the MAO are not met. If a facility has received a penalty or order and is not able to resolve it through negotiation with DEQ, DEQ proceeds to the first level of appeal, the contested case hearing. The hearing is conducted by an administrative law judge assigned by the Oregon Central Hearings Panel. Adverse decisions from the hearing may be appealed to the Environmental Quality Commission, which is DEQ's oversight and rulemaking body. The facility may also appeal adverse decisions by the Environmental Quality Commission to the Court of Appeals. In addition to the administrative remedies, DEQ may sue the facility for injunctive relief in county circuit court to restore any environmental damage or institute additional compliance activities not already required by the permit or law. DEQ also may refer violations for investigation as crimes by the Oregon State Police or EPA Criminal Investigation Division.

State law conveys discretion to the Director to determine whether a penalty or other enforcement action is to be assessed in any given circumstance. The Director of DEQ implements that discretion through a written Internal Management Directive entitled "Enforcement Guidance for Field Staff," which was most recently updated in 2005. Oregon DEQ is currently revising and updating its enforcement rules in Division 12 and the associated implementation documents. The Enforcement Guidance sets out the DEQ Director's expectation about how long each step of the formal enforcement process should take. A timeliness sheet accompanies each enforcement action and requires each person in the drafting and approval loop to account for the time they spent on the action. Timeliness measures are tracked in DEQ's database. The Director's historic goal has been to have all formal enforcement actions issued (signed by the Director) within 55 days of completion of the investigation. This goal is more aggressive than EPA's goal of initiating an enforcement action 90 days after becoming aware of a violation. DEQ has not always met the 55 day goal, but it is not a statutory requirement, just an objective. DEQ is in the process of evaluating its timeliness data in order to develop a timeliness expectation that is more in alignment with the current enforcement process. In the EPA NPDES Program Review, OCE provided a timeliness summary from its Enforcement Tracking Database for 2003. During interviews with OCE, it was stated that the average case took approximately 90 days from receipt of a case at OCE to issuance of the complaint. In one example, on or around September 27, 2000, an estimated 3.5 - 4.5 million gallons of untreated sewage was discharged with a proposed penalty of \$3,900. This action took 162 days from completed inspection to Director's signature. The timeliness summary does not indicate when the violation occurred or whether all violations at a facility are included in the complaint. Evaluation of compliance to DEQ's rule was not possible because no tracking database existed for NPDES violations in the State of Oregon.

MAOs are DEQ's equivalent to consent orders or the administrative compliance orders EPA issues pursuant to Section 309(a) and (g) of the Clean Water Act (CWA). An MAO places a noncompliant facility on a schedule for coming into compliance with its NPDES permit. MAOs are also used in conjunction with civil penalties. However, EPA's 2003 review of the State's NPDES program found that some of DEQ's MAOs contain inconsistent findings and relief for similar situations. EPA noted the following deficiencies: (1) compliance schedules were too long; (2) interim limits for parameters in noncompliance were not based on sound engineering analysis; (3) final compliance dates in some MAOs could not be determined; and (4) interim and final compliance dates were frequently extended. Not every

MAO had all of these deficiencies. Some MAOs had none of these deficiencies. EPA and DEQ are working through the PPA to resolve these issues.

Other examples of MAOs with no definite end dates were identified during EPA's NPDES Program Review. EPA found the final compliance date in an MAO was written for the facility to come into compliance with effluent limits five years after the completion of a TMDL. If a compliance date is tagged 5 years after a yet-to-be-developed TMDL is completed, the actual date of compliance is unknown. In some cases, the interim limits in an MAO were inappropriately lenient and inappropriate and not based on sound engineering analysis. For example, in some of the MOAs for addressing POTW noncompliance events, the facilities were required to achieve interim limits that were "as low as practicable" (e.g., BOD, TSS), or to achieve limits "as high as practicable" (e.g., BOD percent removal). MAOs are by definition an agreement between the State and the facility to comply with alternative conditions of a Permit. This agreement does not prohibit third party lawsuits for failure to comply with a NPDES Permit.

A majority of the MAOs reviewed by EPA included numerous addenda extending interim limits and final compliance dates. These addenda were typically in the form of letters written to the facility and placed in the file. EPA found that many of the extensions were inappropriate or not adequately justified by the documentation in the file. In addition, it was often difficult to determine an MAO's final compliance date because the addenda were issued as letters and could easily be misfiled. This last problem may be corrected by having a complete and accurate data management system.

DEQ encourages supplemental environmental projects (SEPs) for facilities which have penalties in excess of \$2,000 and are proposed by the facility. The EPA NPDES Program Review found some SEPs approved by DEQ are inconsistent with EPA's and DEQ's SEP policy. However, they are not required to follow EPA's policy. Oregon Administrative Rules allow for SEPs in 340-012-0047. The DEQ uses an Internal Management Directive for Civil Penalty Mitigation for Supplemental Environmental Projects to implement OAR. However, in at least one example, EPA identified a facility being granted credit for a project that EPA believes needed to be done to ensure compliance with the NPDES permit. The permittee was given SEP credit for installing screens to ensure that plastics would not plug the settlement pond pumps. The violation was an unpermitted discharge of wastewater caused by plastic plugging the settlement pond pumps. Although several other actions were taken by the company and DEQ did not feel that the screens were a necessary action to take, the installment of screens ensured that the facility would not cause the same violation. Installing equipment to ensure a facility does not have the same noncompliance event in the future is an inappropriate use of SEP credit under DEQ's Internal Management Directive. DEQ and EPA differ on whether the SEP was inappropriate.

Appropriateness of enforcement actions are guided by both the OAR and by Internal Management Directives including the "Enforcement Guidance." First, whether any enforcement action will be taken on a particular case is determined by the Enforcement Guidance. Once a Permit/Compliance Officer refers a case to OCE, environmental law specialists evaluate the evidence, policies and law, and determine an enforcement strategy. During this process, DEQ determines how many of the possible violations will be cited for penalty and how many days of violation will be cited. Multiple violations or days of violation are more likely to be cited when: (1) the violations separately had the potential to cause significant adverse impacts to the environment or posed significant threats to public health; (2) the violations were caused through flagrant or willful action; (3) the violations are chronic and prior formal

or informal action by the Department has not resulted in compliance, or the violator has demonstrated recalcitrance; and (4) the violator appears to have had sufficient financial resources and expertise available to avoid the violation. In addition, DEQ works closely with State and federal criminal investigators and prosecutors and may refer for criminal investigation cases where the violator acted deceitfully, deliberately, or dishonestly.

Second, in determining the appropriate dollar figure for a penalty assessed through the administrative process, DEQ applies a penalty formula in the OAR, Division 12 rules. The formula considers the DEQ Program in which the violation occurred; the sophistication of the violator; the Class of the violation; the potential harm resulting from the violation; the violator's past history of enforcement; the duration of the violation; whether the violator acted negligently, intentionally, or flagrantly; the efforts of the violator to correct the violation or mitigate its effects; and the economic benefit of the violation. The environmental law specialists are assigned to particular programs to ensure consistency of action between cases and the case strategy and documents are reviewed by middle and upper management. All penalties are signed by the Director of DEQ.

In general, respondents have 20 days from receipt of a formal enforcement order to appeal the order. In resolving orders that are appealed, DEQ prioritizes according to the risk and degree of continuing harm to human health or the environment by the violation. The rules and statutes governing the appeals process do not set specific time frames for resolution of appealed orders. Regardless of whether the case proceeds through the administrative penalty and order process, if there is an imminent threat to public health or the environment, DEQ may seek injunctive relief through State Courts. Injunctive relief is a legal means for obtaining relief, or an action not otherwise required by an existing Permit or statute through State Court.

DEQ assessed 86, 53, and 59 water quality penalties for 2001, 2002, and 2003, respectively. The only referral to the State Attorney General's office during this time period was a referral for injunctive relief DEQ made regarding a construction stormwater case in 2003. A value of the injunctive relief sought was not provided by DEQ. Oregon refers especially egregious cases to a county District Attorney to be considered for criminal prosecution. If compliance schedules are part of a formal enforcement action, DEQ's Water Quality Program staff submits a proposed compliance schedule along with the referral for enforcement. If a formal enforcement action is taken, then the schedules would either be unilateral or on consent. Legally trained staff reviews the proposed schedule for consistency with other schedules and for enforceability of language. OAR Chapter 340, Division 12 includes a factor to address prior enforcement actions and/or violations when calculating a penalty. All compliance orders are tracked in the Enforcement Database managed by OCE. Cases are not closed until compliance is met or circumstances make compliance moot.

EPA's review of DEQ's enforcement actions revealed that economic benefit did not appear to be evaluated for every action. As part of DEQ proposed revisions to Division 12, they may adopt the following language in 340-012-0150 for determination of Economic Benefit:

- Provides that economic benefit will be calculated using the U.S. EPA's Economic Benefit (BEN) model; use of the model is no longer discretionary.

- Makes clear that to determine the economic benefit, the Department considers the benefit gained and the costs avoided or delayed as a result of noncompliance.

Out of thirteen enforcement actions reviewed, nine stated there was either no economic benefit or there was insufficient information available to make a determination.

The means through which DEQ tracks compliance with enforcement orders depends on what kind of order it is. All orders are entered into the enforcement database and are not closed until the ordered action(s) is completed. Tracking of individual requirements in orders is shared by or delegated to either the Permit Writer or the Environmental Law Specialist handling the enforcement case. Hard copies of all NON (after June 1, 2005, these notices will be called either warning letters or pre-enforcement notices), which are written notices issued for all documented violations are kept in the permittee's permanent file. All NONs are also logged into an agency-wide database. The permit files contain the documentation supporting the issuance of the NON. DEQ does not currently enter these actions into the national Permit Coding System. However, once an IDEF connection is established with PCS, DEQ's database will be able to transmit data to PCS. For violations that are referred for civil penalty, a permanent, case-specific enforcement file is created, which contains the documentation supporting the violation and the calculation of the penalty. DEQ is working on integrating their enforcement database into EPA's ICIS database. This system is not yet available. EPA is supporting the effort to integrate its data management system with PCS and ICIS. All formal enforcement actions issued by DEQ are tracked in their enforcement database. An extract from this database is available on the internet at: <http://www.deq.state.or.us/programs/enforcement/enfquery.asp>.

EPA Region 10:

The Region does not have its own formal policy to identify, prioritize, and ensure corrective measures are taken to address noncompliance problems. Region 10 utilizes guidance provided in the enforcement management system (EMS) and initiatives based on Regional needs.

The Region expects DEQ to address noncompliance problems causing environmental/human health impacts at facilities which the State has authorization (all but Indian Country and biosolids facilities). If the State does not resolve the problem to the Regions satisfaction we may "overfile" or initiate an action independently, depending upon available resources. For violations in Indian Country the Region is guided by the November 8, 1984 U.S. Environmental Protection Agency Policy for the Administration of Environmental Programs on Indian Reservations, July 16, 2001 U.S. EPA-Region 10 Tribal Consultation Framework, and the EMS. Region 10 is guided by the EMS for violations at biosolids facilities.

The Region has a 6-month time frame for addressing facilities with enforcement actions starting with the date of violation (e.g., inspection violations start date are the date of inspection). The Region uses the national EMS as a guide for appropriate enforcement response. To assess penalties, the Region utilizes the Interim Clean Water Act Settlement Penalty Policy and sector specific enforcement response policies, such as the Stormwater Expedited Settlement Offer Policy.

In any enforcement action, Region 10 reserves the right to refer cases to the Department of Justice and will do so if the violations are severe or numerous. Region10 refers cases to the Department of Justice if a facility continues to violate the CWA after a penalty order or if a facility violates conditions of its

compliance order. Region 10 will also refer a case to the Department of Justice if there is a need for injunctive relief (i.e., a demand for penalty or an action not otherwise required by a permit or statute).

In the past, the Region and DEQ had an agreement that EPA would populate PCS for the State facilities. This system was not optimal because information was not current and the Region did not have the resources to input all facilities and all required information. Recently, the Region has disinvested inputting Oregon facility data (permit limits, compliance schedules, and effluent data) into PCS because it is the responsibility of DEQ. DEQ is attempting to utilize the IDEF system and feeding PCS directly. In the past five years, EPA has taken two enforcement actions in the Oregon.

The Region generally does compliance tracking of enforcement orders by requiring the facility to report to EPA when it has completed required tasks. Each compliance officer is responsible for tracking his or her enforcement actions and ensuring the facility is completing the provisions in the enforcement action in a timely manner. Penalty payments are tracked by the Regional Hearings Clerk.

2. Record Keeping and Reporting

The State of Oregon:

DEQ utilizes a database to track formal enforcement actions. DEQ also operates a complaint-response program designed to identify and bring into compliance those facilities that are operating without the necessary NPDES permit(s), or have received citizen complaints. The information contained within this database is accessible upon request.

EPA Region 10:

The Region expects to develop interface capability between the State database and the national PCS database to maintain accurate and up-to-date records of performance of sources in Oregon. The PCS database is available to the public through Envirofacts (Web site provides access to several EPA databases) and ECHO located at the EPA headquarters' Web site: <http://www.epa.gov>. DEQ's file system is located in their Regional offices and formal enforcement actions are maintained in DEQ's OCE files.

As of August 2004, Region 10 stopped entering permits and compliance data into PCS, and the Oregon records in the national database are out-of-date. An effort is underway to correct this and enter all 2005 WENDB data elements. In the past, the Region has directly entered data for all Region 10 NPDES facilities (including those in Oregon and Washington, which have authority to implement the NPDES program); however, the Region does not have the resources to continue doing this. Recently, the Region has developed a PCS plan for improvement that refocuses the Regions PCS data entry work for all Region 10 States to the EPA administered permits. The objective of the PCS plan for improvement is to increase the accuracy and timeliness of data entered into PCS for all regulated entities including EPA-administered permits.

The central file system maintains inspection reports, and reports submitted by the permittee (e.g., DMRs) and other documents, such as EPA or State correspondence, citizen complaints, or notices from the facility. The system has not been well maintained for a long period of time resulting in missing files, reports, and the like. The Region is currently re-structuring the file system and the process for file

removal to ensure that the records are accurate, up-to-date, and available to the public. It is anticipated that the new file system will be complete in 2005.

3. Inspections

The State of Oregon:

DEQ's inspection strategy of NPDES permitted facilities ensures inspection coverage for the sources most at risk to cause environmental damage if a problem occurred. DEQ currently inspects NPDES major facilities each year and NPDES minor facilities at least every three years. DEQ selects the subset of minor facilities to be inspected each year based on compliance histories and DMR report results. In addition, DEQ inspects facilities prior to permit renewal. These visits also include technical assistance. Oregon DEQ is shifting its inspection and monitoring strategy to a "watershed approach" to consolidate coverage (permitting, TMDL, and compliance/enforcement) of facilities within a geographic area.

Oregon DEQ does not consider file reviews to constitute inspections and does not have a separate strategy relating to file reviews. The results of file and DMR reviews may trigger inspections. Oregon DEQ does not target enforcement beyond its inspection strategy and complaint response.

Oregon DEQ utilizes a watershed approach to focus its stormwater inspections. This approach is based on the geographical areas with the greatest risk of environmental damage. For example, this means the State focuses the most inspections for construction stormwater runoff in Western Oregon because the combination of rain and development on property with steep slopes holds the greatest risk in the State rather than in the eastern part of the State which has minimal rainfall. CAFO inspections are conducted by the ODA rather than DEQ. Similarly, inspections of sand and gravel stormwater facilities are conducted by the Oregon Department of Geology and Mining Industries (DOGAMI); while other stormwater facilities may be inspected by local government agencies acting as agents for DEQ. The State participates, as resources allow, in new EPA initiatives through the PPA/PPG process.

As DEQ continues to implement its watershed approach, the approach to inspections will change slightly. Oregon DEQ will conduct a compliance inspection for sources in a watershed following permit issuance. This ensures implementation of newly issued or renewed permits through follow-up inspections, and concentrates inspection efforts in a given geographic area for maximum efficiency and deterrence. Additional inspections outside the watershed will also be focused in conjunction with other agency efforts, such as sector-based initiatives. Under this scheme, DEQ will continue to inspect facilities prior to permit renewal.

EPA Region 10:

EPA is responsible for direct CWA implementation at four Oregon locations in Indian Country and at over 500 biosolids facilities. The Region also periodically conducts oversight visits of DEQ's compliance activities. The Region's inspection targeting and monitoring strategy is accomplished on an annual basis. Factors that are considered in selecting facilities are: facilities required to be inspected by the CWA statute; national priority facilities; Regional priority facilities; facilities located within impaired watersheds; facilities about to be issued a permit; facilities with a history of noncompliance; effluent violations that are known to be toxic; and, complaints from the public.

National priorities are set primarily in consideration of risk to public health and the environment. For example, the wet weather priorities (CSO/SSO, stormwater, CAFO) were selected because the CSO/SSO and CAFO sectors produce the most exposure to pathogens when violations occur and stormwater causes the most sediment, temperature, nutrient, and pesticide contamination to surface waters. Regional priorities are based on specific industries the Region believes provide the most risk to public health and the environment, as well as what watersheds are at the most risk. The Region 10 NPDES Program's priorities are a reflection of the national and Regional priorities. For example, the Region believes that the construction stormwater sector provides the most risk to public health and the environment and is a national priority; therefore, the Region has committed to focus on the stormwater sector during FY2005 - FY2007.

The majority of the sectors, facilities, pollutants, or geographic locations are chosen by the Region's inspection-targeting process. The inspection list is constructed by considering national, Regional, and watershed priorities, as well as those priorities of the NPDES Compliance and Permits Unit. The Region typically keeps up-to-date with national priorities and initiatives, and will participate in those as they come up and resources allow.

4. Compliance Assistance

The State of Oregon:

Oregon DEQ is organized in a manner that maximizes the Agency's ability to deliver high quality technical assistance and outreach. DEQ currently maintains 14 local offices across the State. Public inquiries are taken over both the phone and the internet and referred to an expert within the Agency. Technical assistance opportunities are conducted separately or as part of a compliance inspection.

DEQ frequently partners with other State, federal and local agencies to leverage scarce resources into collaborative innovative projects and proposals. DEQ is also working under several specific grants aimed at enhancing water quality. The State is in the development stage in an effort with several neighboring communities in Southern Oregon to integrate requirements under the CWA, Safe Drinking Water Act (SDWA), and ESA into a single water quality action plan for the watershed. With another grant, Oregon is training the construction industry on stormwater management practices. The State is also exploring methods to continue collaborating with other programs (e.g., shipyards, composting, and sediments). A study completed by DEQ's OCE in 2003 found that technical assistance, inspections and penalties have far-reaching effects that stimulate compliance at companies that were neither inspected nor penalized.

To the extent that resources allow, DEQ provides technical assistance to educate permittees and permit applicants. Technical assistance can include advice on facility planning and design, pollution prevention, treatment technologies and strategies, and split sampling, among other things. In addition, during the inspection and enforcement process, DEQ staff meets with and assist businesses and municipalities in determining what must be done to maintain or regain compliance. This assistance typically includes advice on what kind of changes must be made to the facilities, review of plans and schedules, review of engineering plans, and follow-up to ascertain whether the required corrections successfully correct the problem.

EPA Region 10:

The Region uses the following innovative strategies, compliance assistance, pollution prevention, and sustainable management practices to assist the regulated community:

- Provide information in a format that the regulated community will read (many pictures with titles and short paragraphs);
- Contact planning departments throughout the State to ask their assistance in handing out the EPA brochures to local builders;
- Supply the regulated entities and local trainers with copies of EPA brochures;
- Measurement of outcomes from compliance assistance activities;
- Call permittees receiving permits, either for the first time or for renewal of a permit, to give them notice and explain what they should do when the permit arrives; and
- Use an integrated strategy approach for new or newly scrutinized sectors.

Region 10 has been behind the curve on measuring compliance assistance outcomes due to lack of resources (i.e., one person running the program). The Region did not do much compliance assistance until about two years ago when the position was requested from EPA Headquarters. Measurement has not been the Region's focus; it has focused on building internal/external networks, national coordination, Regional planning for compliance assistance, State support and coordination, coordination with Regional assistance programs (pollution prevention, small business, and environmental justice), a Regional integrated strategy, developing and delivering assistance tools to the regulated community, reporting to Headquarters, and most recently reporting into ICIS.

EPA Headquarters provided Measurement Training to Regional staff on July 26, 2004. Overview of the training is: 1) talk about the Government Performance Results Act (GPRA) of 1993; 2) project measures that support GPRA Goal 5 measures; 3) when to think of project management; 4) information collection requests (ICRs); 5) how to get the most out of a survey; 6) survey implementation; 7) analyzing your data; 8) presenting your data; 9) reporting your results, and 10) an introduction to statistical data.

Section IV. Related Water Programs and Environmental Outcomes

1. Monitoring

The State of Oregon:

DEQ conducts ambient river monitoring at 151 sites throughout the State to assess water quality conditions and trends at these sites, provide data for TMDL models, and provide a basis for compliance with water quality standards. It collects water chemistry data at these river sites (i.e., temperature, dissolved oxygen, biochemical oxygen demand, pH, ammonia+nitrate nitrogen, total phosphates, total solids, fecal coliform).

Oregon also has a TMDL development monitoring program. For impaired waterbodies, this program characterizes hydrology, chemistry, temperature and other parameters that are relevant to TMDLs. The data is used to develop and calibrate TMDL models.

The State also monitors physical, chemical, and biological condition of small streams and rivers at 50-100 sites per year throughout the State. The purpose of this monitoring is to assess water quality conditions at these sites, provide data for CWA section 303(d) listing of impaired waters, and provide a basis for to determine beneficial use support. Most of Oregon's small stream monitoring uses a probability sampling design (i.e., Environmental Monitoring and Assessment Program (EMAP)).

In addition, DEQ has a coastal monitoring program that collects physical, chemical, and biological data at randomly selected sites. Since 1999, over 300 sites have been sampled in the estuaries, intertidal areas and offshore marine areas of Oregon.

Oregon DEQ is in the process of developing a State monitoring strategy following the "Elements of a State Water Quality Monitoring Program" guidance (10 elements guidance) that was sent out in March of 2003 (EPA document #841-B-03-003). The State strategy is expected to be complete and adopted by the end of FY2005. The State strategy will follow the 10 Elements guidance and will outline how Oregon will, with the resources available, achieve consistency with the guidance. It will address permit and TMDL related monitoring issues, plus other Clean Water Act objectives. Region 10 is working with Oregon to ensure that its CWA sections 305(b)/303(d) assessments are reflected in the Assessment Database (ADB).

2. Environmental Outcomes

The State of Oregon:

There are 114,823 total miles of rivers/streams and 618,934 total lake acres. The 2000 water quality inventory prepared under CWA section 305(b) report states that Oregon has assessed 82% of lake acres for recreational uses and 34% for aquatic life uses. The percentage of river miles assessed for recreation is 6.6%. Some rivers are designated for recreation, but in reality they are not used for swimming or

boating, so bacterial monitoring may not be the best use of very limited monitoring dollars. These are the kind of trade-offs that will be discussed in the State's monitoring strategy.

For river miles, 13,393 (12%) are listed as impaired on the CWA section 303(d) list. For lake acres, 122,577 (20%) are impaired. The total area of estuaries and bays is 206 square miles, of which 35 (17%) are impaired.

3. Water Quality Standards

The State of Oregon:

The State of Oregon has some of the most up-to-date water quality standards in the nation. In the past several years, Oregon has comprehensively revised and reformatted its existing standards making them more streamlined and easily understood. In addition, the State completed a major effort to revise and update its temperature criteria. More recently, the State has comprehensively updated all of its toxic criteria to correspond to EPA's current national recommendations. In addition to updating and improving the standards themselves, DEQ is improving the implementation of its standards by issuing an internal management directive (i.e., guidance) on conducting reasonable potential evaluations and establishing water quality based effluent limitations by the end of 2005. A companion document to be complete this summer will provide guidance on establishing appropriate mixing zones. Moreover, the State of Oregon has very recently modified the standards development process to ensure that explicit implementation guidance is developed along with the standards. These implementation strategies will be available for review as part of the public process associated with rule adoption. Similarly, DEQ is developing implementation guidance for other recently adopted criteria, including the temperature criteria.

The DEQ has initiated a process for conducting use attainability analyses (UAAs). In practice, however, it is more likely that the State will be reviewing site-specific standards or refining the level of use as opposed to eliminating a use. The DEQ expects that any process may be difficult, expensive, and time consuming. Any changes to the use or site-specific standard would require EPA approval, which may require ESA consultation.

Oregon has historically used a triennial review process. However, more standards revisions are coming during the off-cycle period such that a triennial review is becoming a more continuous process. Oregon DEQ is working to better integrate standards and permits, as discussed above. Oregon uses its triennial review process or standards revision process to ensure timely updates.

Developing nutrient criteria is a low priority for DEQ. The State has not yet adopted the federally-promulgated new bacteria standards for marine waters.

EPA Region 10:

There are four Oregon water quality standards awaiting completion of EPA review. EPA has found it difficult to review and take action on Oregon standards in a timely manner due to the complex nature of the standards themselves and the need to conduct ESA consultation, which requires additional information often not submitted with the standards package. Further, Oregon often includes provisions within their standards that are non-CWA section 303(d) provisions, which adds to the complexity of the

review and approval process. However, EPA and DEQ have agreed to meet and resolve the difference between the agencies on how to treat these provisions.

To facilitate review and approval, Oregon typically involves EPA, the National Oceanic & Atmospheric Administration (NOAA) Fisheries and the U.S. Fish and Wildlife Service in technical discussions before proposing a revision to the current standards. Because of difficulties encountered in the past, the Regional water quality standards unit now works more closely with NPDES permitting and compliance as they review standards submitted by the State for CWA action. There is more cross-program coordination. As an example, the water quality standards unit recently coordinated very closely on a high priority standard (temperature) which is critical for threatened and endangered salmonids.

4. Total Maximum Daily Loads

The State of Oregon:

Oregon DEQ's permitting program coordinates closely with the TMDL program to track progress on and completion of TMDLs. In general, permit issuance is scheduled to follow TMDL completion. However, DEQ recognizes that, at times, TMDL issuance may be delayed, resulting in the delay of permit issuance and increase of the backlog. Permitting and TMDL staff meet regularly during the last phases of TMDL development to discuss implementation issues. Waste load allocations (WLAs) in TMDLs are translated into permits, unless mixing zone issues related to the pollutant are more restrictive, in which case the final allocation is worked out through the permitting process. DEQ has not historically tracked permits implementing TMDLs any differently from those not implementing TMDLs; however, DEQ is considering using this metric as a performance measure in the future.

Oregon's antidegradation regulations (OAR 340-041-0004(9)(a)(D)) prohibit new or increased discharged loads if the receiving water is water quality limited. EPA's 2003 Oregon NPDES Program Review expressed concern with the application of this provision in some permits.

Over the years, DEQ has focused its Continuous Planning Process (CPP) efforts in basin plans. This occurs in updates to the CWA section 303(d) list, updates to water quality standards from the triennial review and other processes, and in developing water quality management plans which are developed along with the TMDLs. As DEQ begins to invest more in the basin and watershed approach, the State plans to further these linkages even more, and the watershed approach will become the process to tie these elements together.

Oregon has developed a total of 492 TMDLs, 432 of those since January 1, 2000.⁸ The Consent Decree filed in *NEDC et al. v. Browner* was entered by the Oregon District Court on October 17, 2000. The Consent Decree required that 310 TMDLs be developed by December 31, 2004. This requirement was met in August 2002.

⁸ The Management Report, measure #54, shows 454 TMDLs completed through fiscal year 2003 (ending September 30, 2003). The value mentioned above also includes TMDLs completed since that date.

Oregon DEQ is currently developing several major basin-wide TMDLs. When these TMDLs are completed, they should be within 100 TMDLs of attaining the 982 TMDLs required by the Consent Decree for 2008.

Oregon currently has 1,726 listings on its 2002 CWA section 303(d) list; TMDLs are currently being developed for over 500 of these listings in these waterbodies.⁹

The State addresses listings by developing sub-basin scale TMDLs, addressing all listings in the sub-basin. Some sub-basins which were scheduled for 2000 - 2001 have yet to be completed. Oregon is currently developing TMDLs in these sub-basins that should be completed this year.

Due to staffing cuts, DEQ revised its TMDL schedule last year, adding three years onto the previous schedule. In this modification, they also moved from a sub-basin approach to a basin approach, thereby further streamlining its process and hoping to gain efficiencies. This will result in larger TMDL projects that address more listed segments at one time. All the impaired waters will be addressed by 2010.

All the TMDLs which have been developed by Oregon have been approved by EPA. They are of excellent technical quality. Point sources are not the major source of water quality impairment being addressed in most of these TMDLs, although point sources do contribute some pollutants. The majority of the loading is from nonpoint sources such as forest harvest, agriculture, and urban development.

5. Safe Drinking Water Act

The State of Oregon:

Oregon has been actively implementing the source water assessment and control program in close partnership with the Oregon Department of Human Services. Nearly all sources have been assessed for possible threats.

Oregon issues permits for groundwater discharges, including those that require a federal underground injection control (UIC) permit, and the land application of effluents through the State Water Pollution Control Facility (WPCF) permit program. This additional permits program is administered in a manner that is very similar to the NPDES program.

⁹ The National Data Sources column of the Management Report, measure #41, shows 1,698 TMDLs in the docket at the end of fiscal year 2003, based on NTTS data as of July 2, 2004. This value should match the number of listings on the 2002 303(b) list. It is slightly different due to discrepancies in entering the list into NTTS.

Section V. Other Program Highlights

The State of Oregon:

Water Quality Trading: Oregon adopted a Water Quality Trading internal management directive (i.e., guidance) on January 13, 2005. The document describes eligibility for trades and establishes an approval process for trades involving either multiple point sources or point sources and nonpoint sources. The document is publicly available on the DEQ Web site.

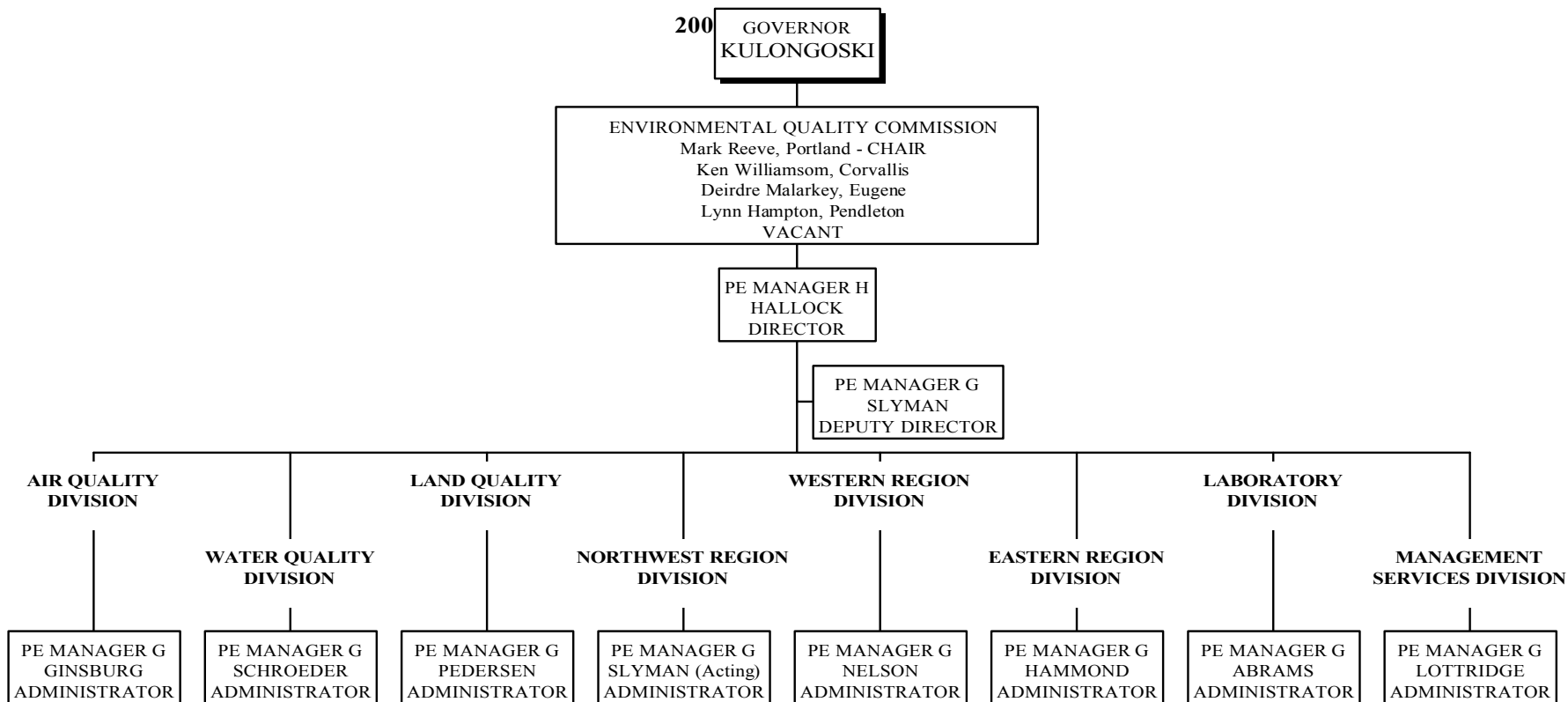
DEQ has identified a major trade involving Clean Water Services (CWS), a sewerage and stormwater special service district located in Washington County. Clean Water Services operates two advanced wastewater treatment plants that discharge to the Tualatin River basin, and both are allowed to discharge a certain amount of BOD and ammonia. Oregon DEQ has issued a permit to CWS that incorporates trading. The permit includes trades for oxygen-demanding substances (ammonia and BOD) and temperature. Under the terms of the new permit, CWS will be able to shift a small portion of the combined load that can be discharged from both plants, between the two plants in order to improve their operational flexibility while maintaining water quality. Extensive analysis has been done to determine how much pollutant shifting can occur without causing water quality standard violations. Based on this analysis, permit limits were developed that vary with instream flow and temperature conditions.

The TMDL for the Tualatin River subbasin developed WLAs for Clean CWS advanced wastewater treatment facilities. Treatment options for meeting the WLAs are limited. Technologies for cooling the effluent on-site, such as shading the treatment units or installing mechanical refrigeration, would either be inadequate, very expensive or both. Trading provides an alternative. Via trading, CWS will be allowed to trade its thermal load by a combination of the following actions:

- Improving riparian shade along the river and its tributaries; e.g., planting trees and vegetation along the stream banks.
- Ancillary benefits to planting trees include improved habitat for wildlife and reduced bank erosion.
- Augmenting flow; by increasing base flows in the Tualatin, the travel time of the river is reduced, which reduces the amount of heating by solar radiation.
- Using reclaimed water (effluent) for irrigation. It should be noted that reuse of the reclaimed water is not strictly speaking a "trade," it is simply a means by which CWS can reduce its thermal load to the river.

Other mechanisms, such as hyporheic exchange flows, may also be available. The permit that was recently issued to CWS requires it to submit a plan showing how it will use these various mechanisms to reduce its impact to meet the temperature standard. Using the results of the model trade, DEQ will be working to refine and promulgate policies regarding trading; develop guidance for trading; and explore opportunities/mechanisms for other types of trades.

**STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
ORGANIZATION**



NPDES Management Report, Summer 2005

Oregon

			Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data	
						State Activities	EPA Activities	State Activities	EPA Activities
NPDES Progress									
Universe	1	# major facilities (6,690 total)	I.1		n/a	76	0	77	
	2	# minor facilities covered by individual permits (42,057 total)	I.1		n/a	305	4	285	
	3	# minor facilities covered by non-storm water general permits (39,183 total)	I.1		n/a	576	0	494	
	4	# priority permits (TBD)	I.6			--	--		
	5	# pipes at facilities covered by individual permits (142,761 total)	I.7		n/a	504	--		
	6	# industrial facilities covered by individual permits (32,505 total)	I.1		n/a	171	4		
	7	# POTWs covered by individual permits (15,197 total)	I.1		n/a	174	0		
	8	# pretreatment programs (1,482 total)	II.2		n/a	24	--		
	9	# Significant Industrial Users (SIUs) discharging to pretreatment programs (22,158 total)	II.2		n/a	235	--	300	
	10	# Combined Sewer Overflow (CSO) permittees (831 total)	II.5		n/a	3	--		
	11	# CAFOs (current and est. future) (17,672 total)	II.3		n/a	70	--	290	
	12	# biosolids facilities (TBD '05)	II.6			--	--		
NPDES Program Administration	13	State or Region assessment of State NPDES program (none (N)/assessment (A)/profile (P))	I.1	50 states 2004	n/a	A, P	P		
	14	% pipes at facilities covered by individual permits w/ lat/long in PCS	I.7		46.3%	11.9%	--		
	15	State CAFO legal authority expected (mo/yr)	II.3	2005	n/a	10/03	n/a		
	16	# Withdrawal petitions/legal challenges (22 total)	I.4		n/a	2	n/a		
	17	DMR data entry rate	I.7		95%	100%	--		
	18	# permit applications pending (1,011 total)	I.6		n/a	13	--	22	1
NPDES Program Implementation	19	% major facilities covered by current permits	I.6	90%	83.7%	50.0%	n/a	70.1%	
	20	% minor facilities covered by current individual or non-storm water general permits	I.6	90% 12/04	87.0%	49.7%	50.0%	52.8%	25.0%
	21	# major facilities w/permits expired >10 yrs. (56 total)	I.6		n/a	1	0		
	22	% priority permits issued as scheduled (TBD '05)	I.6	95% 2005		--	--		
	23	% pretreatment programs inspected/audited during 5 yr. inspection period	II.2		85.3%	100.0%	--		
	24	% SIUs w/control mechanisms	II.2		99.2%	98.7%	--	98.4%	
	25	% of CSO permittees with long-term control plans developed or required	II.5	75% 2008	82.2%	100.0%	--		
	26	% CAFOs covered by NPDES permits	II.3		35%	100%	--		
	27	% biosolids facilities that have satisfied part 503 requirements (TBD '05)	II.6			--	--		
	28	# Phase I storm water permits issued but not current (76 total)	II.4		n/a	0	0		
	29	# Phase I storm water permits not yet issued (5 total)	II.4		n/a	0	0		
	30	Phase II storm water small MS4 permits current (Y/N/D (draft)) (35 States)	II.4	100% states 2008	n/a	D	n/a	0/18/0	
	31	Phase II storm water construction permit current (Y/N/D (draft)) (49 States)	II.4	100% states 2008	n/a	Y	Y		
NPDES Compliance Monitoring and Enforcement Response	32	% major facilities inspected	III.3		71%	85%	0%		
	33	(inspections at minors) / (total inspections at majors and minors)	III.3		76%	2%	100%		
	34	% major facilities in significant non-compliance (SNC)	III.1		20%	3%	--		
	35	% SNCs addressed by formal enforcement action (FEA)	III.1		14%	50%	--		
	36	% SNCs returned to compliance w/o FEA	III.1		70%	0%	--		
	37	# FEAs at major facilities (666 total)	III.1		n/a	0	0		
	38	# FEAs at minor facilities (1,660 total)	III.1		n/a	0	1		

Explanation of Column Headers:

Profile Section: For each measure, this column lists the section of the profile where the program area (including any additional data for the measure) is discussed.

National Data Sources: The information in these two columns is drawn from two types of sources:

(1) EPA-managed databases of record for the national water program, such as PCS, the National Assessment Database, and the National TMDL Tracking System. NPDES authorities are responsible for populating PCS with required data elements and for assuring the quality of the data. EPA is working to phase in full use of NAD and NNTS as national databases.

(2) Other tracking information maintained by EPA Headquarters for program areas such as CAFOs, CSOs, and storm water.

The [definitions document](#) accompanying this Management Report provides a detailed definition of each data element in the National Data Sources columns.

Additional Data: These columns provide additional data in cases where information from other data sources differs from information in the National Data Sources column for reasons such as different timing of the data "snapshot." Additional data should generally adhere to the same narrative definitions as data in the National Data Sources, and should be derived using similar processes and criteria. Our goal is to work with the States on these discrepancies to ensure consistent and accurate reporting. A State contact is available who can respond to queries. The profiles discuss each additional data element.

State Activities: Information in these columns reflects activities conducted by the State program. (Shaded cells in these columns indicate that the work may not be entirely the State's responsibility, but a breakdown of the data into EPA and State responsibilities is unavailable.)

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NPDES Management Report, Summer 2005

Oregon

		Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data	
					State Activities	EPA Activities	State Activities	EPA Activities
Water Quality Progress								
Universe	39	River/stream miles (3,419,857 total)	IV.2		n/a	114,823	n/a	
	40	Lake acres (27,775,301 total)	IV.2		n/a	618,934	n/a	
	41	Total # TMDLs in docket at end of FY 2003 (52,795 total)	IV.4		n/a	1,698	--	1,726
	42	# TMDLs committed to in FY 2003 management agreement (2,435 total)	IV.4		n/a	71	7	
	43	# Watersheds (2,341 total)	IV.2		n/a	--	--	
Water Quality Administration	44	On-time Water Quality Standards (WQS) triennial review completed (42 States)	IV.3		n/a	Y	n/a	
	45	# WQS submissions that have not been fully acted on after 90 days (32 total)	IV.3	<25% submissions	n/a	n/a	2	0
Water Quality Implementation	46	State is implementing a comprehensive monitoring strategy (Y/N) (TBD)	IV.1	all states 2005	--	--	--	
	47	% river/stream miles assessed for recreation	IV.2		13.8%	6.6%	n/a	
	48	% river/stream miles assessed for aquatic life	IV.2		22.0%	26.2%	n/a	
	49	% lake acres assessed for recreation	IV.2		49.4%	82.0%	n/a	
	50	% lake acres assessed for aquatic life	IV.2		48.5%	34.0%	n/a	
	51	# outstanding WQS disapprovals (23 total)	IV.3		n/a	1	n/a	
	52	WQS for E. coli or enterococci for coastal recreational waters (12 States)	IV.3	35 states 2008	n/a	N	n/a	
	53	WQS for nutrients or Nutrient Criteria Plan in place (13 States)	IV.3	25 states 2008	n/a	N	n/a	
	54	Cumulative # TMDLs completed through FY 2003 (10,807 total)	IV.4		n/a	454	--	
	55	# TMDLs completed in FY 2003 (2,929 total)	IV.4		n/a	63	0	
Environmental Outcomes	56	# TMDLs completed through FY 2003 that include at least one point source WLA (5,036 total)	IV.4		n/a	422	--	
	57	% Assessed river/stream miles impaired for swimming in 2000	IV.2		--	--	n/a	
	58	% Assessed lake acres impaired for swimming in 2000	IV.2		--	--	n/a	
	59	# Watersheds in which at least 20% of the water segments have been assessed and, of those assessed, 80% or more are meeting WQS (440 total)	IV.2	600 2008	n/a	--	--	

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