



February 21, 2019

Senator Taylor, Co-Chair  
Representative Jeff Reardon, Co-Chair  
Joint Ways and Means Committee Natural Resources Subcommittee  
*Sent via email to: [jwmnr.exhibits@oregonlegislature.gov](mailto:jwmnr.exhibits@oregonlegislature.gov)*

**Subject:** Department of Environmental Quality (DEQ) Water Quality Program Budget for Fiscal Year (FY) 2019-2021 (HB 5017 and HB 5018)

Dear Co-Chairs Taylor and Reardon and Members of the Committee:

The Oregon Association of Clean Water Agencies (ACWA), League of Oregon Cities (LOC) and the Special Districts Association of Oregon (SDAO) submit this letter of testimony regarding DEQ's Water Quality Programs budget for FY 2019-21 on behalf of the public agencies providing wastewater treatment and stormwater management services across the state of Oregon. Our statewide associations and member agencies are DEQ's local government partners in protecting Oregon's water quality. We share DEQ's and the Governor's objective and commitment to protect public health and improve water quality throughout Oregon.

We have worked closely with DEQ over the past year to understand the Department's programmatic needs, budget concepts and proposals. And, while we are generally supportive of a reasonable increase of resources dedicated to DEQ Water Quality programs, we are very concerned about the Governor's proposed budget concept, as well as the magnitude of DEQ's budget proposals that prompted it. While well intended to reduce a chronic, litigated wastewater permit backlog, the heavily weighted focus on permitting only would waste state and local government resources on a bolstered permitting program that would fail without additional program improvements and investment in requisite development of Total Maximum Daily Loads (TMDLs), water quality standards (WQ standards), and new water quality compliance strategies.

Having worked closely with DEQ in all of its Water Quality program areas and with Department leadership, we are requesting funding for an alternative budget and program enhancement package that we believe is a balanced, methodical approach that will ensure measured progress and relative affordability for Oregonians. This proposal would enable acceleration of DEQ's core water quality work, while continuing to ensure a process and performance accountability for improving programs that have historically performed poorly but which are making strides to improve quality, output and accountability. This proposal will support DEQ in establishing an adequate foundation of TMDLs, standards and permitting tools on which to issue permits and compel environmental compliance.

The table below shows this alternative budget proposal compared to the Governor’s Recommended Budget, along with estimated general and other fund (predominately fee) impacts. We believe this alternative budget proposal fits within the narrative and priorities that were highlighted in the Governor’s Recommended Budget. It is a phased approach that also recognizes required timelines for onboarding the additional staff associated with these enhanced services. We anticipate that fully staffing all of DEQ’s critical water quality programs will require a process that spans several biennia. It should be recognized that our proposal, while reduced from the DEQ and Governor’s proposals, would still have substantial impacts on local government fee requirements. Support for this level of fee-generated revenue is not likely to be accepted or supported on a statewide basis and should be considered a maximum.

**ALTERNATE DEQ WATER QUALITY PROGRAMS BUDGET PROPOSAL  
FY 2019-2021**

DEQ ARB Policy Option Packages (POPs)	Governor’s Proposed Budget			ACWA/LOC/SDAO Proposed Budget*			Notes
	Posi-tions	Gen. Fund	Fees/other	Posi-tions	Gen. Fund	Fees/other	
POP 127-WQ Permitting	27	\$2,877,000	\$2,003,000	9	\$1,000,000	\$670,000	Wastewater only. Remove SW positions
POP 122-WQ Standards	0	0	0	1	\$85,000	\$122,500	Needed to support permitting and reduce litigation
POP 129-TMDLs	0	0	0	2	\$481,000	0	Needed to support permitting and reduce litigation
POP 128- WQ Outcomes	0	0	0	1	\$241,000	0	Needed for TMDLs; restores cut position in GRB
Program Integra-tion; Compliance Strategies	0	0	0	1	\$200,000	0	Re-assigned from POP 127 to cross-program
POP 120-SW: MS4 & ODOT	0	0	0	3	\$421,700	\$280,000	MS4 is GF only; ODOT is funded by ODOT. DEQ to prioritize MS4 assignment.
POP 126-Klamath Basin	3	\$640,000	0	2	\$423,000	0	
POP 164-Lab Equipment	0	0	0	0	\$150,000	0	Antiquated equipment needs to be replaced.
POP 123-Harmful Algae Blooms	0	0	0	3	\$590,500	0	Continuation of partial lab staffing authorized in 2018.
<b>TOTALS</b>	<b>30</b>	<b>\$3,517,000</b>	<b>\$2,003,000</b>	<b>22</b>	<b>\$3,592,200</b>	<b>\$1,072,500</b>	<b>Maintains 60/40 permit fee/gf fund split; shifts some permit positions to WQ stnds and TMDLs.</b>

**\*Note:** The proposed dollar allocations are rough estimates based on rough cost-per-employee estimations derived from DEQ’s Agency Request Budget.

***Redistribute some of the resources and positions from POP 127, which focuses entirely on permitting, to create a more balanced allocation of resources and staff to work on TMDLs, Water Quality Standards, program integration and needed permit compliance tools.***

Although the ACWA/LOC/SDAO budget proposed above retains a heavy focus on water quality permitting, it shifts five positions and corresponding resources from POP 127 into the other

related program areas (i.e., standards, TMDLs, water quality outcomes, and program integration/compliance strategies). These programs must all be staffed sufficiently to perform their core functions. Otherwise, the permit writers will not have the bases on which to generate implementable, legally defensible permits, and permittees will not have sufficient information on water quality requirements to plan for needed infrastructure improvements.

***Retain the 60% fees/40% general fund split for permitting and reduce the overall fee burden.***

Oregon's natural resource agencies, and DEQ in particular, have been chronically underfunded by the State for years relative to delegated mandates and State objectives for environmental leadership. It is time for the State to reinvest in DEQ Water Quality programs in order to achieve its water quality goals. This reinvestment needs to strike a balance between general and other fund (largely fees) support. Until the State re-engages with stakeholders to evaluate this balance, the State should honor the longstanding agreement for funding Water Quality permitting programs--a 60% fees /40% general fund split.

***POP 127, related to Water Quality permitting, should focus on program enhancements for the Wastewater Permitting program and reduction of the wastewater discharge permit backlog. The five stormwater positions in POP 127 should be considered separately, and only after a stormwater program performance evaluation is conducted.***

Wastewater permit fees have increased significantly and positions have been added by DEQ over the last decade without marked improvement in performance. Fees were most recently increased in 2018 by 7%. The fee impacts on wastewater permits, inclusive of annual 3% administrative increases enacted by the Environmental Quality Commission, should be capped at 20% for the biennium. The local government proposal achieves that balance of program enhancements and support.

Municipal Separate Storm Sewer System (MS4) permit fees increased astronomically in 2018 following the 2017 legislature's approval of two new fee-funded permit writers (example 2018 annual permit fee increases include: Bend=838%, Medford=751%, Clean Water Services=738%, Portland=1,470%). Local governments recognize the need to increase staffing in the DEQ Stormwater Programs, however, the five stormwater positions in the DEQ and Governor's Recommended Budget (POP 127) should be removed from POP 127 (as we have proposed above), and the FY 2019-2021 budget should not impose any new fee increases on MS4 programs. Any new staff added to the Stormwater Permitting program should be supported by general funds only. We support DEQ's POP 120, which was proposed in the Agency Request Budget (ARB) to include two general fund MS4 permit writers and an ODOT-funded permit writer. Consideration of additional Stormwater Program staff should occur only after an independent performance evaluation is completed.

***ACWA, LOC, and SDAO support for program enhancements is contingent on continued performance improvements in the wastewater permitting program and an independent performance evaluation and improvement plan for the stormwater permitting program.***

The impacts of DEQ's Water Quality Permitting programs on local governments must be considered and improved. Permits need to be accurate, legal, and implementable by communities. They must make sense for the communities, facilities and watersheds for which they apply. Since the Wastewater Permitting program undertook a legislatively required independent, third-party evaluation, with stakeholder engagement, strides have been made by the Department to improve the permitting process and increase permit production. However, more work needs to be done. DEQ's Stormwater Permitting Program should be evaluated in a similar manner to address significant performance concerns.

ACWA, LOC, and SDAO support for the program enhancements shown above is entirely contingent on a corresponding requirement for DEQ to continue its work to improve performance, accountability and reporting in a manner that addresses the following concerns.

#### Wastewater Permitting.

- The negative consequences of DEQ's new centralized permit-writing approach must be reduced by re-engaging knowledgeable regional DEQ staff in the permitting process in a formal way, improving communications and problem solving with local government partners, and by dispersing new staff throughout the regions.
- An annual evaluation must be performed, including a transparent identification of issues raised in the permit writing process and how they were resolved, how permits with insufficient compliance options were addressed, and how the Water Quality Standards, TMDLs, and permitting processes and work plans were integrated. This evaluation should have stakeholder input and be provided to the legislature.
- Adaptive management changes need to be made to improve and demonstrate the integration of the water quality programs, the integration of regional DEQ staff experience and expertise as well as local government technical experts, and permit implementability issues.

#### Stormwater Permitting.

The local government sector has raised significant concerns with DEQ leadership regarding the performance, work products and accountability of the Stormwater permitting program. We request that an independent, third-party evaluation of the stormwater programs, to include a stakeholder involvement process, be conducted and that a report be delivered to this committee during the next legislative session. While we support POP 120, which would add two MS4 positions that are fully general fund supported, we do not support the five stormwater positions that were included in POP 127 at this time, and we request that prior to adding or filling additional positions, the requested independent, third party review be completed to identify performance improvements and inform development of a permitting program improvement plan.

***DEQ's POP 123, relating to staff to support analytical testing for harmful algal blooms, is critical in order for local governments to be able to abide by newly adopted monitoring/sampling rules. It should be restored to DEQ's budget, at least in part.***

POP 123 would have continued funding for five positions at the DEQ lab to support the sampling and analyses for harmful algal blooms that are now required for municipal water systems. The

Governor's budget does not include a proposal to continue this funding, and it will sunset if not re-instated in DEQ's budget. We urge the legislature to continue, at least in part, its support for these required lab analyses. Therefore, the budget proposal outlined above includes restoration of three of the five positions that were included in DEQ's POP 123.

***Summary Statement***

ACWA, LOC, and SDAO appreciate the complexity and importance of the DEQ Water Quality Program budget that is before the Committee at this time. We have worked diligently and collaboratively with DEQ staff, and we generally support the direction DEQ was headed in preparing the Agency Request Budget. Our budget proposal generally reinforces the needs that were conveyed in the Department's budget within the Wastewater programs. These programs have made strides in identifying shortcomings and improvements, and in building responsive service and accountability to the local government partners and other stakeholders. We believe, however, that effectiveness of the Stormwater program would benefit greatly from the same type of evaluative process that the legislature required of the Wastewater Permitting program, and we recommend that the legislature include that requirement in its action on this budget.

The alternative budget proposal we have proposed reflects a substantial increase in resources and staff and a corresponding commitment to shoulder a fair share of the costs. This proposal would enable significant program expansion and acceleration. At the same time, it builds in the corresponding assurances that the programs will continue on a path of performance improvement, work quality improvement and accountability to the stakeholders. We are willing to support strategic and thoughtful investments that we believe, and hope, will result in necessary improvements and forward progress for this program. However, we are unable to support the level of fee increases as proposed in the DEQ Agency Request Budget and Governor's Recommended Budget.

We appreciate your consideration of our comments and our proposal, and we stand ready and interested in continued dialogue with the Department, the Governor's Office and the legislature regarding DEQ's Water Quality Program budget.

Sincerely,

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