Chair George and Commissioners:

Thank you for the opportunity to address you again and to ask for EQC adoption of temporary compost rule changes regarding pathogen reduction requirements. We appreciate your interest and engagement.

When we presented to you on Jan. 25, 2019, we heard your concerns about the need for additional explanation for the rationale for the temporary rule changes as well as the need for public input. In response, DEQ has rewritten the staffing report to address the comments and questions we heard on the 25th and has held a one week public comment on the proposed temporary rule changes

DEQ proposes temporary rules to address prejudice that would occur if the temporary rule is not adopted. Prejudice would occur to the Port of Tillamook Bay, the digester operator that the Port has hired and the parties to feedstock agreements to operate the POTB anaerobic digester. DEQ will also develop a permanent rule to incorporate these changes.

The urgency for a temporary rule is due to the legal uncertainty posed by the petition to reconsider that DEQ received and granted regarding the pathogen reduction rules and the permit modification that DEQ issued to the POTB.

To summarize the proposed rule changes: DEQ proposes to modify its compost rules to require that pathogen reduction requirements be the same for land application of digestate regardless of where the anaerobic digester is located. The current rules require that digestate from a non-agricultural anaerobic digester meet a pathogen reduction limit of 1000 Most Probable Number fecal coliform count. Digestate from agricultural digesters are exempt from meeting this limit. The proposed rule change will require that land application of digestate be done at agronomic rates in compliance with federal biosolids requirements.

As a result of the one week public notice (Feb. 7 – Feb 14), DEQ received 16 comments from 6 commenters. DEQ drafted responses and updated the staffing report that were sent to you on Friday, Feb. 22.

In response to the comments received, DEQ recommends a change to the proposed rule to clarify that the digestate - not the digester - is what is exempt from meeting the pathogen reduction limit if land applied at agronomic rates in compliance with federal biosolids requirements and this change is requested in the updated staffing report.

We want to summarize the primary considerations and issues that we have heard and how we have addressed them. I will cover two of the concerns we heard and then Bob will cover four.

* Urgency:

Urgency relates to the legal uncertainty posed by the petition to reconsider and whether the POTB can meet operating contractual agreements.

* Economic considerations:

In the original staffing report, DEQ stated that the POTB would not be able to meet the 1000 MPN limit. A digester could meet that limit if the time of digestion were increased or the temperature is increased at increased energy use. However DEQ understands from POTB that to do so would mean that the anaerobic digester would not be able to operate economically if these times and storage requirements are required.

DEQ is not an expert on the costs to run a digester and what the break even point is and does not need to consider costs for the establishment of pathogen requirements for digestate. An economic evaluation is not needed because the combined digestion and land application at agronomic rates is environmentally safe so that no digester needs to incur the additional economic costs to extend digestion time and storage.

Break

Now Bob will address the technical questions we’ve heard:

 **Does the addition of type 3 feedstock to manure at the POTB Digester increase the pathogen load of the digestate?**

The answer is no. Type three feedstocks such as food waste, fish processing waste and fats, oils and grease, generally contain much lower levels of pathogens than does manure. Manure contains a very high fecal coliform count, often in the 10s to 100s of millions. Food waste and other type 3 feedstocks generally contain a significantly lower fecal coliform count, in the 100s to low 1000s. The addition of type 3 feedstocks will not increase the pathogen load of digestate and the digestion process will significantly reduce the pathogen level in digestate. Soil application of the digestate at agronomic rates will further degrade pathogens to safe levels.

However, type 3 feedstocks may increase the nutrient load of digestate from nutrients such as nitrogen or phosphorus contained in the food waste or other materials. This rulemaking does not address the increased nutrient load, as the proposed temporary rule is a pathogen reduction rule change. DEQ has considered this issue when drafting the POTB Digester permit and consulted with ODA staff and addressed the potential elevated nutrient levels in the POTB’s permit by requiring any digestate that is land applied be done so in compliance with agronomic application rates and in compliance with an ODA approved nutrient management plan.

**How safe is digestate land application if the digestate has not met the pathogen reduction standard?**

Application of digestate to soil at agronomic rates is safe and an accepted EPA treatment method for digestate. The pathogen reduction limit of 1,000 MPN fecal coliform per gram solids, is a standard found in EPA biosolids rules. EPA research established that standard as a safe level for the public if directly exposed to the material. EPA established other procedures and standards for soil application of digestate since the risk of public exposure is very low.

 EPA research has shown that digestate that is land applied at agronomic rates will result in a safe level of pathogens that meets the pathogen limit of 1000 MPN. The digestion process significantly reduces pathogens, as much as a 97% reduction. Digestate soil application further reduces pathogens to safe levels through soil microbiological activity. Application at agronomic rates provides control such that digestate is not over applied, minimizing the risk of surface and groundwater pollution.

Currently, while the POTB digester is not operating, raw undigested manure is being applied to soil. Soil application of digested manure is environmentally preferable to soil application of raw manure.

**Is the reference to land application in the temporary rule a new requirement?**

The rule does not require digestate to be used on farms as a fertilizer or soil amendment. Anaerobic digester operators may propose to DEQ, land application or other methods of digestate management, such as disposal into a wastewater treatment plant or processing to create a concentrated fertilizer product. Currently in Oregon, all digestate is land applied at agronomic application rates. However, if digestate is processed into a product intended for public consumption, it would be subject to the 1000 MPN fecal coliform standard.

Land application is a not new digestate management for the POTB digester. POTB digester has always sent digestate back to participating farms for soil application. The former POTB permit required soil application to be conducted at agronomic rates. And the digestate was (under older permit) and is currently regulated under the ODA CAFO Nutrient Management Plan.

**What agency(ies) have regulatory authority if something goes wrong?**

Manure is considered a solid waste, even when still on the farm. DEQ is the state agency that has authority to regulate solid waste and to issue permits for facilities that manage solid waste (solid waste disposal sites). State law allows an exemption from DEQ permitting requirements for disposal sites that have a Water Quality permit, including a CAFO permit. Anaerobic digesters are disposal sites, and if located on a farm (agricultural operation) and possessing a valid CAFO permit, need not obtain a DEQ AD SW facility permit. ODA regulates those facilities through the CAFO permit. A DEQ Air Quality permit may be required for an electric generating engine.

Digesters that do not have a CAFO permit are regulated by a DEQ Composting Facility Anaerobic Digester permit, an AQ permit for generator engine exhaust and potentially a DEQ Stormwater permit. The POTB digester has a DEQ solid waste compost permit, a DEQ air quality permit and the POTB site is regulated through a DEQ WQ stormwater permit.

DEQ and ODA staff consult frequently when questions arise over operating or regulatory issues related to farm digesters as well as permitting questions.

DEQ-permitted anaerobic digester operators may propose to accept any type of feedstock and any amount that can be demonstrated to work for the digestion process, and can be stored, processed and removed in an environmentally sound manner; including management and disposition of digestate.

Anaerobic digesters operated under an ODA CAFO permit are limited by zoning restrictions and ODA CAFO permit limitations to operating as an agricultural operation. This means managing farm manure, farm wastes and small amounts of off-farm feedstocks. Commercially operated anaerobic digesters that receive various feedstocks including manure, food waste, grease and sludges, are not considered agricultural operations and require a DEQ anaerobic digester permit. If local zoning codes allow, farm digesters may apply to DEQ to obtain a DEQ Composting facility permit and operate as a commercial digester similar to the POTB digester.

The proposed temporary rule change will treat farm and non-farm digesters and digestate similarly and will not create an advantage for one type of digester over another.

Closing and Next Steps (Audrey):

Thank you for the opportunity to address your concerns and summarize the proposed temporary compost rule changes.

As noted at the start DEQ requests EQC to approve the temporary compost rule changes. DEQ will be proceeding with a permanent rule making as well.

Please let us know if we can answer questions.