Good afternoon, Chair George, Commissioners, for the record my name is Jennifer Purcell. I am DEQ’s Regional Coordinator on the north coast, representing DEQ in Tillamook, Clatsop, and Columbia counties and serving as a member of the Governor’s North Coast Regional Solutions Team. Thank you for the opportunity to be here today. As Audrey and Bob have mentioned, I am going to speak about the urgency of this consideration.

I want to first acknowledge that DEQ intends to address the inconsistency we’ve described through permanent rulemaking, however a temporary rule amendment is necessary to address a current permit consideration.

I would like to begin by providing some background regarding the permit in question.

In 2003, the Port of Tillamook Bay constructed an anaerobic digester to process manure from several Tillamook County dairy farms. Until recently, the digester operated under a DEQ solid waste treatment permit. In 2013, DEQ amended the compost rules to include regulation of anaerobic digesters. In 2016, DEQ issued a compost permit to the Port of Tillamook Bay, replacing the Port’s solid waste permit for the digestion of manure.

In 2018, the Port of Tillamook Bay applied for a permit modification to accept type 3 feedstocks in addition to manure. When modifying the permit, DEQ identified this inconsistency in the rules. DEQ consulted with the Oregon Department of Agriculture and determined that land application of liquid digestate from the POTB digester should be treated similarly to the land application of liquid digestate produced from digesters located on farms. DEQ issued the permit modification in October 2018 and included permit conditions in the POTB compost permit requiring that land application of liquid digestate be done so at agronomic rates in compliance with a nutrient management plan approved by ODA.

After issuing the Port of Tillamook Bay’s permit modification, DEQ received a petition for reconsideration of the permitting decision. In reviewing the assertions in the petition, DEQ identified legal uncertainty in the rules regarding the pathogen reduction standards and testing requirements and how they apply to facilities located at agricultural operations as opposed to those located at non-agricultural operations.

The current pathogen reduction limits and testing requirements are not economically viable for manure digesters and do not result in environmental benefit. This was not the Department’s intent when modifying the compost rules to include anaerobic digesters, as is reflected in the exemption provided to agricultural operations. The proposed temporary rule language provides the clarification necessary to allow manure digesters not located at agricultural operations, to be commercially viable while providing the additional environmental benefits of pathogen reduction and biogas capture.

DEQ’s compost rules regulate the digester facilities as well as the land application of the digestate. In order to ensure that the land application of the digestate is protective of the environment and human health, the proposed temporary rule language requires that digestate be applied at agronomic rates. Furthermore, the POTB permit specifically requires that the digestate be delivered to farms in accordance with an ODA-approved nutrient management plan, regardless of the farm’s CAFO status. For clarification, DEQ has relied on the Oregon Department of Agriculture to regulate digesters located on farms as agricultural operations under the CAFO NPDES water quality permit.

In the case of the Port of Tillamook Bay, DEQ has issued the permit modification in question and the permit is active, however the regulatory uncertainty relating to this decision will delay operations of the DEQ-permitted facility. Failure to act promptly would result in the Port of Tillamook Bay’s public infrastructure remaining underutilized. The North Coast RST has worked closely with the POTB to ensure this valuable community asset does not remain idle. Delayed operations will postpone the odor and pathogen reduction benefits provided by the digestion process; and put farmer, feedstock, and power purchase agreements at risk. Without this facility:

* Manure management options are limited for participating dairy farmers;
* Feedstock agreements for managing organic waste material are at risk, limiting alternatives to landfilling; and
* The local utility risks losing green power promised by the power purchase agreement.

The proposed temporary rule amendment as presented for your consideration would:

* eliminate the inconsistent application of the pathogen reduction rule, regulating all facilities that digest manure equally, regardless of location;
* encourage the anaerobic digestion of manure and the associated environmental benefits of pathogen reduction and biogas capture; and
* limit legal uncertainty related to the petition for reconsideration, providing for the Port of Tillamook Bay’s anaerobic digester to resume operations.

Again, DEQ intends to address this inconsistency through permanent rulemaking. However, this matter is urgent given the current permit consideration and warrants this temporary rule amendment.