

State of Oregon

## Department of Environmental Quality Memorandum

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**Date:** March 10, 2023

**To:** Environmental Quality Commission

**From:** Leah K. Feldon, Director

**Subject:** Item A: Director's Report (Informational)  
March 17, 2023, EQC meeting

### 1.0. Director's Office

#### 1.1 Environmental Justice and HB 4077 (2022) Implementation

DEQ's Environmental Justice Work Group hosted an all-agency meeting on March 2 to share their work and priorities. The work group is currently organized around three subgroups:

- The **Technical Team** is focused on refining, reviewing, and standardizing a set of data to assess environmental burdens in alignment with HB 4077 for the Governor's EJ Council's review. The Technical Team collaborates with DEQ's Lead Data Steward, the Oregon Health Authority, the Department of Administrative Services, Portland State University, and the West Coast EJ Tool Group (comprised of technical experts from California and Washington agencies who have done similar work).
- The focus of the **Policy Team** for 2023 includes updating DEQ's existing Environmental Justice policy, integrating environmental justice and equity into DEQ's rulemaking process, and supporting additional DEQ work to include EJ in the implementation and design of programming such as Supplemental Environmental Projects.
- The **Outreach and Engagement Team** is focused on three primary activities: developing a resource library to capture past examples of outreach and engagement activities at DEQ to support future efforts, creating a map of community-based organizations across the state that work with overburdened communities and support environmental justice initiatives to systematize DEQ's working relationships with these communities, and developing an internal agency communications and cultural plan to help staff center environmental justice within all their work.

DEQ received two positions to support implementation of HB 4077 (2022). The first position is a coordinator for the Governor's Environmental Justice Council. This is the first full-time paid

support position for the group. DEQ has made a successful hire, the person will start work on March 20. The second position is a Research Analyst to support DEQ's involvement in development of a statewide Environmental Justice mapping tool. Unfortunately, the first recruitment did not result in a successful hire, we are evaluating next steps now.

### **1.2. Environmental Quality Commission Assistant**

DEQ is in the midst of a recruitment process to replace Stephanie Caldera, the commission's long-time assistant. First round interviews were conducted the week of March 6. The agency's goal is to have a new commission assistant to support the May 2023 regular meeting.

## **2.0. Air Quality**

### **2.1. Cleaner Air Oregon (CAO)**

CAO continues to make progress overseeing the risk assessment process for existing permitted facilities. Most recently, the agency approved the final risk assessment for Entek International LLC. That assessment demonstrates current emissions are below regulatory thresholds that would require risk reduction measures. The results do trigger mandatory community engagement activities. DEQ expects that work to unfold in the coming months.

### **2.2. Oregon Clean Vehicle Rebate Program**

The Oregon Clean Vehicle Rebate Program has issued over 27,000 rebates equaling over \$67 million in distributed funding. Program participation has increased annually, with rebate disbursements about 50% higher in 2022 compared to 2021. Due to the overwhelming success of the program, funding will be depleted in early summer 2023 resulting in a suspension of rebates beginning in May 2023. Per rules adopted by this commission, suspension means eligible vehicles purchased or leased during the suspension period will not be eligible for a rebate.

The program will be suspended until additional funding is received. DEQ will begin notifying interested parties and the public of the suspension in March 2023. The legislature is considering proposals to increase funding for the program. Any appropriation authorized this session would not be available for use until later this summer.

### **2.3. Air Quality Permitting Rules Implementation**

EQC adopted the Air Quality 2022 Permitting rules in November 2022 with an effective date of March 1, 2023. Any Notice of Intent to Construct applications and permits issued on or after March 1, 2023 must comply with the new rules. DEQ held a series of four trainings for permitting staff in preparation for implementation of the new rules. DEQ also held a virtual training for all regulated facilities, resulting in more than 300 participants. All supporting permitting resources and guidance documents are updated and ready for the March 1 implementation date.

#### **2.4. Air Toxics Science Advisory Committee (ATSAC)**

A second meeting of the Air Toxics Science Advisory Committee was held on Jan. 20, 2023. The committee and agency staff discussed a process and criteria to be used when evaluating potential updates to Oregon's Toxicity Reference Values, the health-based values that underpin air toxics regulations. The bulk of the conversation focused on how the agency should approach chemicals where authoritative source (e.g. US Environmental Protection Agency, California Environmental Protection Agency, and the Agency for Toxic Substances and Disease Registry) have differing reference values for the same chemical.

The next step in the update process is for agency staff to do a review of all ~250 chemicals using the criteria and approach identified by the committee. This screening will identify particular chemicals and values that warrant deeper discussion by the science advisory committee.

#### **2.5. Cumulative Health Risk Pilot Program**

Originally authorized by SB 1541 (2018), DEQ is beginning implementation of a pilot program for evaluating the cumulative risk from air toxics. The statute limits the assessment to one community, in either Multnomah or Washington County. The pilot, known as the Cumulative Health Risk Pilot Program is under active development:

- Technical staff are working to identify data layers to support the prioritization and selection of the pilot area and review screening methodologies.
- Community engagement staff are designing a broader plan and meeting with interested parties, as well as developing a public listening session for feedback on screening indicators.

### **3.0. Land Quality**

#### **3.1. Fuel Tank Seismic Stability Program**

Last July and November, we reported on implementation of new legislation for large capacity fuel storage facilities to prepare for a magnitude 9 Cascadia earthquake. [Senate Bill 1567 \(2022\)](#). DEQ completed the third of four planned rulemaking advisory committee meetings on March 3, 2023 and anticipates opening the public comment period for proposed rules in May 2023. An informational presentation is planned at the May Commission meeting. Commission consideration of a final rule proposal is planned for September 2023. More information is available on the DEQ project [webpage](#).

#### **3.2. Updating Recycling System**

The Plastic Pollution and Recycling Modernization Act will update Oregon's outdated recycling system by building on local community programs and leveraging the resources of producers to create an innovative system that works for everyone. The Oregon legislature passed the Recycling Modernization Act (Senate Bill 582) during the 2021 legislative session. The new law became effective Jan. 1, 2022, and recycling program changes will start in July 2025. This system-wide update will make recycling easier for the public, expand access to recycling

services, and create environmental benefits while reducing social and environmental harms, such as plastic pollution. Producers and manufacturers of packaged items, paper products and food serviceware will pay for these necessary improvements and help ensure recycling is successful in Oregon.

The rules advisory committee for the Plastic Pollution and Recycling Modernization Act met on March 10, 2023. The sixth RAC meeting will be April 11, 2023, to allow for more discussion and feedback. We anticipate rule concepts from the first rulemaking period will go to the EQC for approval in September 2023. Oregon's Recycling Council (a group established by the SB 582) met in February to discuss the list of materials for collection statewide and hear about aspects of the law that advance equity. We are beginning outreach to potential advisory committee members for the second RAC, which will focus on the fees and permit and certification programs relevant to commingled recycling processing facilities, the evaluation and disclosure of the environmental impacts associated with the lifecycle of covered products, among other items.

### **3.3. Mattress Stewardship Program Update**

The Mattress Stewardship Act, or SB 1576 (2022), establishes a statewide system for the financing, collection, and environmentally sound management of discarded mattresses. This new program will include collection sites and events located conveniently around the state, funded by a flat fee on each mattress sold. A stewardship organization will operate the program and must submit a plan to DEQ for approval by Oct. 1, 2023; this plan will provide details on how the program will work, as required in statute. After approval of a plan, businesses that wish to sell mattresses in Oregon must be registered with the stewardship organization. DEQ will provide administrative oversight to ensure the stewardship organization is in compliance with statutory requirements.

Rulemaking for the Mattress Stewardship Act of 2022 began in December 2022, and the second of two advisory committee meetings concluded on Feb. 3, 2023. During these two meetings, draft rules, the fiscal impact statement and the racial equity statement were shared with committee members for their input. Draft rules are being finalized at this time, in preparation for the public comment period in April. The public hearing will be held April 19, 2023 at 9 a.m., with more details to follow in the coming weeks. It is expected draft rules will be presented to the EQC at the July 2023 meeting.

## **4.0. Water Quality**

### **4.1. Aquatic Life Use Updates Rulemaking**

The Standards and Assessment team continues to develop proposed rule amendments, beneficial use maps and tables, and supporting documentation to update Oregon's Aquatic Life Use designations, which are part of DEQ's water quality standards.

The objectives of this rulemaking are: 1) to correct and clarify Oregon's aquatic life use subcategory designations associated with the water quality standard for temperature, and 2) to designate use subcategories associated with the water quality standard for dissolved oxygen. The use designations determine when and where the criteria in Oregon's temperature and dissolved oxygen standards apply to protect aquatic life. The proposed updates are based on the best available scientific information about habitat distribution and species life stage timing across the state, primarily from the Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. This data has improved in quantity and accuracy since DEQ first adopted fish use designations in 2003. In addition, some of the proposed updates result from improved GIS mapping capabilities rather than changes to the data on fish uses or habitat.

The aquatic life uses update is complex and affects many waters across the state. DEQ has extended the rulemaking schedule to incorporate recently received information before the proposed rules are released for public comment. DEQ expects to open public comment on the proposed rule amendments in mid to late April. Depending on the time needed to consider and respond to public comment and requests for additional data or analysis by EPA, DEQ expects to present the recommended rule amendments to the EQC in September or November 2023.

#### **4.2. Drinking Water Protection**

The Drinking Water Protection team works closely with owners of public water systems and their local watershed partners to apply for Oregon Health Authority's Source Water Protection grants which opened in January and are due March 22, 2023. Public water system owners can apply for grant funds of up to \$50,000 (per water system per year) or low interest loans of up to \$100,000. This is a great opportunity for DEQ to promote watershed protection with local watershed partners such as soil and water conservation districts, watershed councils, and local governments. Water system owners are encouraged to work on projects that are mutually beneficial. Outreach is focused on: 1) small public water systems that have limited capacity and serve disadvantaged communities, and 2) water systems interested in land acquisition or other conservation within their watershed. Projects address planning for drinking water protection, watershed acquisition and watershed management; spill prevention and response planning; and riparian restoration and bank stabilization. Last year, Oregon Health Authority funded five drinking water protection projects for a total of \$235,300.

This funding opportunity is also used to leverage significant federal funds with the Drinking Water Providers Partnership which coordinates a competitive grant solicitation for habitat conservation and restoration projects in drinking water source areas. For 2023, our Federal partners (U.S. Forest Service, Bureau of Land Management, and EPA) will be investing over \$600,000 in eight projects in Oregon drinking water source areas. These projects address stormwater best management practices, invasive plant removal, improving stream structure with wood placement, riparian restoration, and reducing sediment from forest roads. Several of the projects have close ties to environmental justice communities and tribes.

### **4.3. Integrated Water Resources Strategy**

This year the Water Resources Department is leading an update to the 2017 statewide Integrated Water Resources Strategy (IWRS). The IWRS charts a long-term course to meet the state's in-stream and out-of-stream water needs including water quantity, water quality, and ecosystem needs. This update will include substantial and diverse input from interested parties. DEQ staff are participating on the IWRS update project team and will incorporate input from DEQ staff, management, and the EQC over the coming months.

## **5.0. Eastern Region**

### **5.1. Recycling in Rural Eastern Oregon**

The Plastic Pollution and Recycling Modernization Act provides opportunities for all communities in Oregon, including small and rural, to expand recycling services. Many communities in Eastern Region have been historically underserved with recycling services due to resources limitations and long-distances to recycling markets. Communities interested in obtaining funding for expanded services must complete a [Needs Assessment Survey](#) by April 14. Staff in Eastern Region have been aggressively promoting the program and holding in-person meetings to provide accurate and timely information about the Recycling Modernization Act. The Needs Assessment Survey opened on Jan. 5 and as of Jan. 25, 39% of the responses (13 out of 33 submissions statewide) were made by Eastern Oregon communities.

### **5.2. Chemical Waste Management Northwest hazardous waste permit renewal**

DEQ continues working with EPA to develop a draft hazardous waste permit renewal for Chemical Waste Management of the Northwest, Oregon's only hazardous waste landfill. Once finalized, DEQ will post the draft permit for public notice and host a public hearing to collect written and verbal public comments. The permit requires EQC approval prior to issuance. This permit is highly complex and lengthy, and timelines for completion are dynamic. Fall 2023 is the earliest the permit may be ready for presentation to the EQC.

### **5.3. Lower Umatilla Basin Groundwater Management Area**

DEQ continues working with local, state and federal partners to address long-standing nitrate groundwater contamination and drinking water needs of residents in the Lower Umatilla Basin. This is a very complex issue and there are no simple solutions. There are two separate but related action paths: 1) Oregon Health Authority is working with the counties to provide testing, filters and drinking water to those in need; 2) DEQ and the Oregon Department of Agriculture are working with the counties and the LUBGWMA Committee on long-term solutions to reduce contamination. [The LUBGWMA Committee in February adopted bylaws](#) that outline how the committee operates. Additionally, the committee is seeking to fill a vacant committee member position: the Rural Residential Community Representative position, one of two members in the general public category. Interested candidates can find more information about the volunteer position and how to apply on the [LUBGWMA website](#).

## **6.0. Western Region**

### **6.1. Coffin Butte Landfill**

DEQ is participating in a Benton County workgroup discussing issues and process regarding an anticipated landfill expansion request from Coffin Butte (Republic Services). The final meeting of the Benton County Talks Trash group is in late March 2023. If the county is supportive, DEQ expects Republic to re-apply for a Conditional Use Permit authorizing the expansion. If land use is approved, a solid waste permit modification application will follow. Regardless of the outcome of expansion plans, it is expected that Coffin Butte Landfill will have considerably more public interest in the next few years than it has had previously.

### **6.2. 2020 Wildfire Recovery**

#### **6.2.1. Blue River Wildfire Community Wastewater Update**

Lane County is conducting a feasibility study for a wastewater system for Blue River community. The area is served by individual septic systems. Lane County received American Rescue Plan Act funding from the State of Oregon for the project in 2022. The feasibility study includes evaluations of how best to treat wastewater in Blue River. It will also evaluate treatment options to ensure the surrounding natural habit would not be degraded. Requirements for this project include finding affordable treatment and disposal options while protecting the water quality in the Blue and McKenzie rivers under the Three Basin Rule requirements.

There are two sources of funding administered through DEQ for septic replacement or repair in the wildfire recovery area in the McKenzie River valley: Craft3, a community lender is providing grants and loans, and the Eugene Water & Electric Board. DEQ's Onsite Septic Financial Program awarded about \$1.6 million to the Eugene Water & Electric Board and \$600,000 to Lazy Days RV Park in 2022.

#### **6.2.2. North Santiam Sewer Authority Wildfire Community Wastewater Update**

To address water quality needs and promote long-term economic vitality of the North Santiam Canyon, the North Santiam Sewer Authority (NSSA) is pursuing two wastewater projects: one serving the Mill City and Gates area (Project A), and one serving the Detroit and Idanha area (Project B). Three of these communities (Detroit, Gates and Idanha) currently rely on individual septic systems, while Mill City maintains a Septic Tank Effluent Pump (STEP) sewer system.

In 2021, Marion County was granted \$50 million from the Oregon Legislature to assist NSSA with building the Mill/Gates wastewater treatment system and to assist with initial engineering for the Detroit/Idanha wastewater treatment system. Marion County is beginning an in-depth groundwater study to identify an effluent disposal site and to start the facility plan for the Mill City/Gates wastewater treatment plant.

DEQ's Onsite Septic Financial Program awarded about \$2 million to Mid-Valley Council of Governments for septic replacement and repair in the wildfire impacted area in 2022. Craft3 has funding available as well.

### **6.2.3. Three Basin Rule Review for the Onsite Permitting Program**

The Three Basin Rule (OAR 340-041-0350) for portions of the McKenzie, Clackamas, and Santiam watersheds applies to new wastewater discharges as well as modification to existing permits that result in an increased discharge of treated wastewater of 5,000 GPD or more. The rule adds regulatory requirements and approval from the EQC for water pollution control facilities permits in the areas covered by this rule. DEQ anticipates receiving applications for permits requiring the Three Basin Rule process in areas impacted by the 2020 wildfires as these communities look at options for rebuilding.

A technical workgroup at DEQ is being convened to identify applicable rules and standards for evaluating a water quality application; determine what information needs to be submitted by an applicant; identify the process for how DEQ would review/analyze the submission; and consider what level of public engagement to include. We anticipate an information item at the May EQC meeting to inform the Commission the agency will likely present a draft permit in the Fall.

## **7.0. Laboratory**

### **7.1. Oregon Water Quality Index Report**

The Oregon Water Quality Index, or OWQI, provides a general statistical overview of water quality status and trends across Oregon using a defined set of discrete water quality variables. The scores the index produces are used to communicate information on the overall water quality of Oregon's rivers and streams in an easy-to-understand, non-technical manner to the public, agency managers and the Oregon Legislature. Variables in the index are dissolved oxygen (percent saturation and concentration), biochemical oxygen demand (BOD), pH, total solids, ammonia and nitrate nitrogen, total phosphorus, temperature and bacteria (E. coli). The [current report](#), released in February 2023, includes data collected between Oct. 1, 2012 and Sept. 30, 2022.