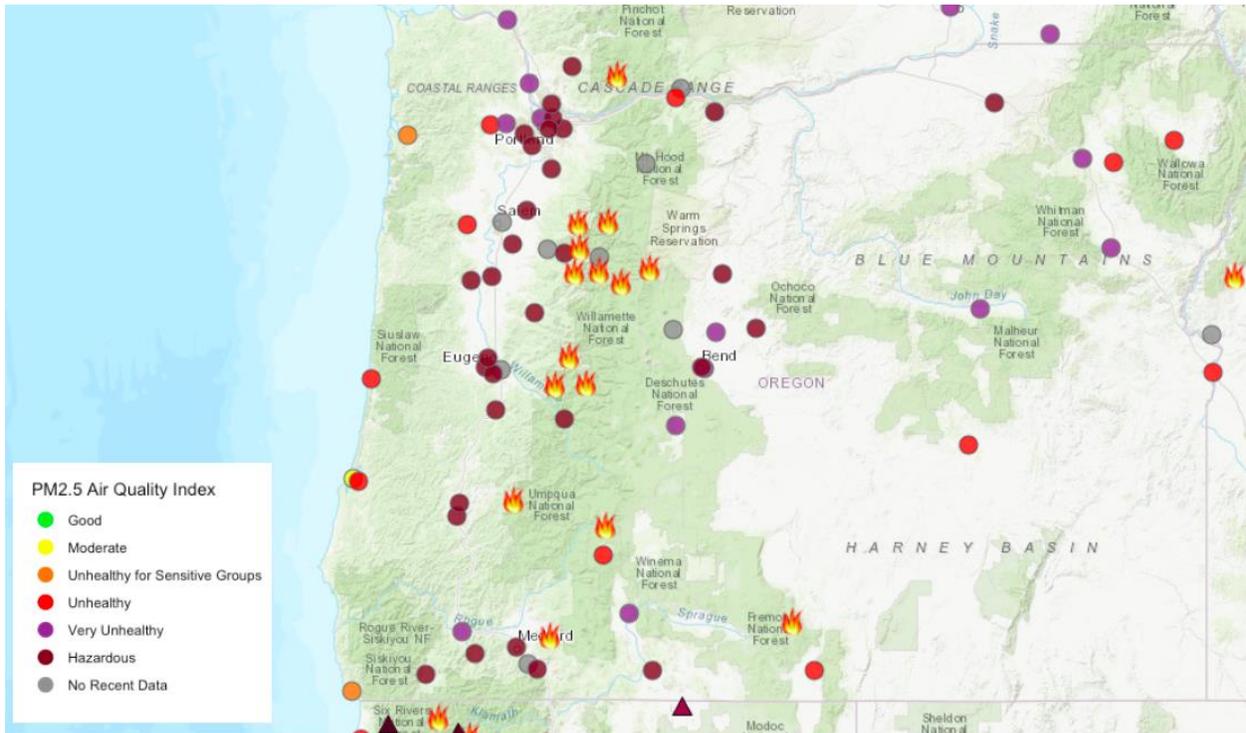


**Date:** Sept. 13, 2020  
**To:** Environmental Quality Commission  
**From:** Richard Whitman, Director  
**Subject:** Item G: Director’s Report (Informational)  
Sept. 17-18, 2020, EQC meeting

**As I finalize this report, western Oregon is in the midst of some of the worst wildfires we have seen in a century. In communities up and down the state, there are tragic stories emerging of lost lives and homes, and a large part of our population is living through evacuations, the threat of evacuations, and dense hazardous smoke. Please take care of your families and neighbors, stay safe and if at all possible stay indoors until conditions are safer in your area.**



## **1. Agency Management**

### **1.1. EDMS updates**

Since the last commission meeting, the EDMS project team, DEQ staff and the agency's contractor, enfoTech, have continued testing of the first wave of the new system to identify remaining issues prior to final user acceptance testing. As a result of this work, additional rounds of testing have been scheduled and the "go live" data for Wave 1 is being pushed back to ensure a smooth roll out. As a result of these changes, the full implementation of EDMS will be slightly later than the anticipated target of early 2022, with final dates to be determined with staff and leadership input.

DEQ continues to update staff, project partners and regulated entities about the project through the Your DEQ Online webpage, where project timelines and other information can be accessed.

- **Your DEQ Online:** <https://www.oregon.gov/deq/Permits/Pages/Participating-Programs.aspx>

### **1.2. Rulemaking authority delegation: Request for action**

In September, DEQ's Rules Coordinator, Meyer Goldstein, retired. State law requires all agencies to have a designated Rules Coordinator, who has the authority to file approved rulemakings. With Goldstein's retirement, the commission must take formal action to update the relevant form with the Secretary of State's Office, as the responsibilities may not be subsumed through positional authority or appointment.

Emil Hnidey, the Air Quality Rules Coordinator, is serving as the interim Agency Rules Coordinator, and the Secretary of State requires a new form is submitted when changes are made. DEQ requests that the commission approve the revised delegation form, as seen as Attachment A to this report, and authorize Chair George to sign the form on the commission's behalf.

### **1.3. Commission annual survey and Key Performance Measure**

Annually, the commission is asked to complete a self-evaluation survey, which provides the data for one of DEQ's Key Performance Measures that are reported to the Oregon Legislature. For the 2019 meeting year, commissioners reported an overall score of 92 percent, against a target of 100 percent. A memo outlining the results and supporting data is included as Attachment B to this report.

## **2. Laboratory**

### **2.1. Water Quality Toxics monitoring update**

The DEQ Laboratory will be resuming full-scale toxics monitoring this year. Beginning this September, additional compounds of interest will be integrated into the toxics monitoring sampling events. These compounds are prioritized from DEQ's Toxics Reduction Strategy focus list, and include priority metals including inorganic arsenic and bioavailable aluminum, glyphosate, legacy and current use pesticides, and industrial byproducts. Due to COVID, the need to limit travel and additional safety precautions, this year's monitoring will focus on sites in the Willamette Basin in closer proximity to the laboratory.

### **2.2. Klamath Falls water quality monitoring and ODA collaboration**

This fall, the DEQ lab will resume seasonal support of an Oregon Department of Agriculture nutrient monitoring project in Upper Klamath Lake. The DEQ lab entered into an inter-agency agreement with ODA last summer to support the project by providing analytical services. The project objective, in part, is to monitor nutrient loads in water pumped from agricultural fields into Upper Klamath Lake. ODA plans to use data from this study to developing adaptive management strategies, in cooperation with area farmers, to protect water quality in the Klamath Basin.

## **3. Air Quality Division**

### **3.1. School Bus Replacements**

DEQ continues to help reduce diesel emissions in Oregon by funding local school systems that are replacing and retrofitting school buses.. To date, DEQ has obligated and spent \$5.3 million of funds from the Volkswagen Settlement to address 180 buses, reducing annual emissions by approximately 27.8 tons of harmful nitrogen oxides and 2.4 tons of carcinogenic particulate matter. The state will replace or retrofit at least 450 school buses over the next 2.5 years, and DEQ is on track to meet that goal. All school districts that were selected to participate in the program have been informed to submit a grant application by Sept. 30, 2020. In recognition of school district budget issues from COVID-19, districts will be allowed to have an end date up to three years after their grant start date to allow ample time and budget capacity to buy new buses. Any allotments not obligated by the selected districts starting Oct. 1, 2020, will be reallocated to other eligible applicants on a first come first serve basis.

### **3.2. Volkswagen Grants 2020 Rulemaking**

Air Quality Planning staff recently completed a series of stakeholder meetings to develop new rules for DEQ's upcoming Diesel Emissions Mitigation Grant Program. The program will allow

Oregon to decommission older, more polluting diesel trucks and equipment by supporting equipment owners with retrofit, repower, and replacement projects for newer, cleaner technology and exhaust controls. The draft rules are based on legislative direction from House Bill 2007 and establish guidelines for how DEQ will allocate approximately \$40 million across the state to reduce diesel emissions with available VW Settlement funds. Staff are currently finalizing rule language and preparing public notice documents. DEQ expects to bring this program to EQC for action in January of 2021 with a goal of opening the first round of grant funding later in 2021.

### **3.3. Multi-state Memorandum of Understanding for heavier-duty zero-emission vehicles**

Oregon recently signed onto a multi-state Medium- and Heavy-Duty ZEV MOU with 14 other states and Washington D.C. The MOU commits states to work together to advance and accelerate the market for electric medium- and heavy-duty vehicles, with a goal of 100 percent of all new medium- and heavy-duty vehicle sales be zero emission vehicles by 2050 with an interim target of 30 percent zero-emission vehicle sales by 2030. In order to achieve this, the MOU includes the development and implementation of a ZEV action plan for trucks and buses, and will seek ways to accelerate the deployment of these zero emission vehicles to benefit communities that have been historically burdened with higher levels of air pollution.

### **3.4. GHG vehicle emissions agreements with auto manufacturers**

California recently signed agreements with five automakers (Ford, Honda, BMW, Volvo, and VW) to produce cars that reduce vehicle greenhouse gas emissions through the 2026 model year and expedite the transition to zero-emission vehicles. Its significance comes at a time when the federal administration has rolled back the existing emission standards for these vehicles to keep them at 2020 levels through the 2026 model year. Oregon will participate in the California arrangement with automakers as one element of its program to reduce greenhouse gas emissions from the transportation sector. It should be noted that this type of approach could help transportation fuels suppliers meet obligations under cap and reduce requirements that will be considered by the commission late next year.

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

As of Sept. 8, 2020, the OCVRP has awarded over 6,790 Standard rebates and over 570 Charge Ahead rebates for a total of over \$17.9 million in incentives for clean vehicles. Of those awarded, 1,460 Standard rebates were dealership-sponsored applicants. Approved, dealership-sponsored applicants can receive "cash on the hood" when dealerships sign up with DEQ. To date, DEQ has agreements with over 65 dealerships across the state.

The Center for Sustainable Energy is under contract for implementation of the OCVRP. On Aug. 8, 2020, DEQ issued CSE a Notice to Cure, citing contract performance failures, most notably,

failure to launch the online platform that would allow applicants and dealers to apply online and check the status of their application. CSE continues to process rebates manually, as well as operating a call center for program participants, and conducting an education and outreach campaign.

### **3.6. Regional Haze Program**

The Regional Haze program is mandated by the federal Clean Air Act to improve visibility in national parks and wilderness areas across the nation. The federal program goal is for these designated areas to reach natural conditions for visibility by 2064. The program is broken up into 10-year planning periods and the state implementation plan for the second planning period is due July 31, 2021. In December 2019, DEQ notified 30 Title V facilities and one ACDP facility that DEQ would require a technical and cost analyses of Regional Haze controls. After an extension due to COVID-19, these analyses, called four-factor analyses, were due June 15, 2020. For several weeks, DEQ operations, planning, and permitting staff reviewed the submitted analyses. As well, DEQ staff consulted with other states to strive for consistency, where appropriate, in identifying criteria and screening levels for pollution control cost-effectiveness assessment. On Aug. 14, 2020, DEQ staff asked facilities for additional information for 62 control devices on 43 emissions units at 17 facilities. Facilities' responses are due Sept. 14, 2020. Regional Haze rules require extensive consultation with federal agencies and tribes and formal public notice; in addition, DEQ is also planning stakeholder outreach and informational meetings this fall.

### **3.7. California Heavy-duty Engine and Vehicle Regulation**

On Aug. 27, 2020, DEQ delivered written and oral testimony to the California Air Resources Board in support of California's proposed Heavy-duty Engine and Vehicle Omnibus Regulation. Eric Feeley delivered oral testimony on behalf of Division Administrator Ali Mirzakhali. Heavy duty vehicles are one of the largest contributors of nitrogen oxides (NOx) emissions. Not only is NOx a federally regulated pollutant, but NOx also contributes to unhealthy levels of ozone and secondary fine particulate matter. Since the Clean Air Act preempts all states except for California and states following California's standards from establishing non-federal standards, DEQ closely tracks California actions and evaluates air quality benefits of Oregon adopting California standards. DEQ testified that US EPA has failed to further reduce emissions in the heavy-duty sector and therefore DEQ strongly supports CARB taking action now and passing the proposal to reduce NOx and PM emissions associated with new diesel engines. Should California pass the Omnibus regulation, DEQ has already begun planning to adopt California's standards as part of DEQ's commitments under the Statewide Transportation Strategy (STS) multi-agency 2019-21 workplan. Elements of the proposed standards that DEQ believes would be particularly beneficial in Oregon are:

- Reducing NOx emissions from new engines by 90 percent over the long term;

- Reducing allowable PM emissions by 50 percent. This will prevent backsliding from currently certified levels;
- Creating a new certification low load cycle. This will help reduce the source of approximately 50 percent of current NOx emissions from the sector;
- Replacing the in-use-testing not-to-exceed method with a moving average window method. This would capture a more complete picture of the real-world emissions profile of heavy-duty on-road vehicles.

### **3.8. Air Toxics Rulemaking**

Air Quality Planning staff are part of the core rulemaking team, along with Cleaner Air Oregon staff, that is aligning Air Toxics Program rules with CAO rules. DEQ has three programs that address health risk from air toxic contaminants:

- Division 244 describes the state delegated federal hazardous air pollutant program that uses a technology-based approach to reduce 187 hazardous air pollutant emissions – or HAPs - from large facilities;
- Division 245 describes Cleaner Air Oregon, which adds to Div. 244 regulations by aiming to reduce emissions of 600+ of toxic air contaminants; and
- Division 246, describes the Oregon State Air Toxics Plan, which aims to reduce risk from 55 toxic air contaminants present in ambient air.

DEQ is developing revisions to Division 246 to:

- Align with one list of all regulated toxic air contaminants and the process for updating risk-based concentrations;
- Describe the frequency, process, and tools DEQ may use to assess statewide risk from toxic air contaminants.

### **3.9. Medford SIP planning**

Air Quality Planning staff recently engaged with the EPA in evaluating approaches for the Medford-Ashland area air quality maintenance plan. This region was out of attainment for particulate matter, specifically PM10, starting in the 1980s, mainly from point sources and on-road mobile sources. Exposure to high levels of PM10, particles less than or equal to 10 micrometers in diameter, presents a risk to human health because of the body's inability to effectively filter out these small particles. Controls in the Medford-Ashland attainment and maintenance plans have lowered PM10 emissions since the 1990s. In 2026, if the PM10 levels outside of exceptional events remain below federal standards, a maintenance plan will no longer be required for this region. Staff are working with EPA and the Medford community this fall to develop a strategy for updating the Medford plan.

## **4. Land Quality Division**

### **4.1. Concrete Environmental Product Declarations**

DEQ's voluntary educational program, in partnership with the Oregon Concrete and Aggregate Producers' Association, is ending this calendar year. The program, which lasted for three years, was successful in getting voluntary disclosure of the environmental impacts of concrete mixes through third-party verified labels called environmental product declarations, known as EPDs. These labels help concrete producers identify the environmental impacts in the production process and allow consumers to choose lower impact concrete mixes. The program has provided technical and financial support to over 20 individual concrete plants around the state, which helped produce over a thousand concrete EPD labels.

More recently, private and public building projects are using these EPD labels to purchase lower impact concrete mixes. The City of Portland recently passed purchasing policies that require EPDs for all purchased concrete. DEQ is working with the City of Portland to establish a global warming potential limit for concrete mixes and conducting pilot projects to test the limits of some of these low carbon mixes.

### **4.2. Waste Impact Calculator Model**

The Materials Management Program is finalizing the first edition of its Waste Impact Calculator (WIC) model, an analytical tool that will increase DEQ's understanding of the environmental effects of solid waste.

While solid waste has traditionally been measured and understood in terms of sheer weight, Oregon's 2050 Vision and Framework for Action, adopted by EQC in 2012, calls for materials to be evaluated and managed in terms of environmental impacts. These environmental impacts include greenhouse gas emissions and freshwater use. The WIC model bridges these two perspectives, allowing DEQ staff and stakeholders to translate standard weight-based solid waste data into full life cycle environmental impacts. WIC allows such users to experiment with alternative management scenarios, calculating how impacts would change under management ideas like maximized recycling or reductions in food waste generation. WIC also calculates the "Alternative Recovery Rate" described in ORS 459A.012.

WIC is receiving technical peer review in fall 2020, after which it will be published first as a codebase, and later as an interactive web tool.

### **4.3. Sustainable procurement initiatives**

DEQ is collaborating with DAS Procurement Services' efforts to integrate sustainable procurement practices and develop a formal sustainable procurement program. The intent of the program is to reduce environmental impacts of purchased products and services. Recently, DEQ has provided consultation on sustainability criteria in currently adopted and in-progress price agreements for food service products, language services and building equipment. While assisting DAS, DEQ has successfully integrated a wide spectrum of sustainability criteria, such as avoiding PFAS in food ware, sustainable wood harvesting practices and company sustainability practices into the renewal of existing statewide price agreements.

DEQ is also conducting research to better support state procurement program decisions through two unique projects. The first project is looking at the supply chain impacts of statewide purchasing to identify high impact areas of focus. Results have shown that the categories of construction, food, fuels/lubricants, office supplies, professional service and vehicles are high impact areas of consumption when considering greenhouse gas emissions. The second project is a pilot analysis to monetize the environmental costs of products using natural capital accounting. Monetizing environmental impacts of products may allow better integration of these impacts into purchasing decisions. The current state procurement system is primarily driven by a low bid environment, which does not integrate environmental externalities in the true cost of products.

### **4.4. EPA's State Authorization for Oregon's Hazardous Waste Program**

By early fall, Oregon will have finalized the Hazardous Waste Program Authorization Revision Application for EPA. DEQ administers most of the Federal Resource Conservation and Recovery Act program for Oregon. Since the initial authorization in 1986, DEQ has requested and been authorized for additional parts of the federal Hazardous Waste Program. With this application, DEQ is requesting an authorization revision to implement, in lieu of EPA, recently adopted federal hazardous waste regulations since last authorization in 2010.

DEQ amends its hazardous waste regulations periodically to update the federal portions of the state rules to be consistent and equivalent with the federal hazardous waste program. The request includes 20 federal rules adopted from two different rulemakings in 2015 and 2017. Many of the adopted regulations address the federal land disposal restriction program, permitting requirements, and hazardous waste management standards, as well as expands recycling opportunities. Nationally and regionally, Oregon has achieved a 97 percent federal rule adoption rate and a 90 percent rule authorization rate when compared to other states, as shown by [EPA's Region 10 and National Charts](#).

## **5. Water Quality Division**

### **5.1. 1200-Z Industrial Stormwater Permit renewal rulemaking update**

The 1200-Z industrial stormwater general permit regulates stormwater discharges from industrial facilities that may reach Oregon waterways, directly, or through a conveyance system such as ditches or storm drains. Over 860 current permit registrants discharge to 184 waterways throughout Oregon. Permit coverage is required for facilities that in particular categories of industrial activity, based on Standard Industrial Classification codes assigned to each facility, and for facilities with specific activities that discharge into the Columbia Slough or the Portland Harbor Superfund site. In general, the permit requires facilities to implement best management practices and control measures to reduce pollution in stormwater discharged from sites. All facilities are required to develop and implement site-specific stormwater pollution control plans, monitor stormwater discharged from each site, and install additional pollution controls if the sampling results do not meet the targets.

In August 2017, DEQ renewed the 1200-Z industrial stormwater general permit for a five-year term. DEQ subsequently received a petition to reconsider the permit and a lawsuit challenging the permit was filed in Multnomah County Circuit Court. In August 2018, DEQ entered into a Settlement Agreement with Northwest Environmental Defense Center, Columbia Riverkeeper and Oregon Industrial Stormwater Group regarding the 1200-Z industrial stormwater general permit renewal. DEQ committed to a number of items, including issuing a final revised 1200-Z permit by the end of March 2021.

In early 2019, DEQ established a rules advisory committee to provide input to DEQ on the elements of the 1200-Z industrial stormwater general permit renewal associated with the Settlement Agreement. Specifically, DEQ sought input on the evaluations, methodologies, and appropriate scale for considering numeric water quality-based effluent limitations for impaired waters and numeric technology-based effluent limitations or benchmarks for copper, lead, zinc, and total suspended solids. The advisory committee also considered appropriate monitoring and reporting requirements in relation to effluent limitations or benchmarks. DEQ used the feedback from the Advisory Committee as well as other research and information available to develop the draft permit.

The draft permit is posted for public comment through October 14, with a public hearing September 29. DEQ is proposing the following substantive changes to the permit that include:

- A framework for managing elevated levels of certain impairment pollutants, including copper, lead, zinc, iron, pH, and bacteria, discharged to Category 5: 303(d) listed waterways, that are impaired for that pollutant;

- New requirements for permit applicants that discharge to Category 5: 303(d) listed impaired waterways when monitoring exceeds water quality standards;
- New requirements for facilities that divert stormwater from reaching surface waters to manage pollutant discharges through a mass reduction waiver;
- Changes in monitoring requirements for all current and future permit registrants;
- Changes in statewide benchmarks for copper, lead, zinc, and biological oxygen demand (BOD<sub>5</sub>) benchmark concentration applicable to Columbia Slough dischargers;
- Increased corrective action response requirements for some pollutants detected in industrial stormwater that are above targets;
- Requiring all facilities to use DEQ's new Environmental Data Management System, called Your DEQ Online; and
- Numeric water quality-based effluent limit for discharges to Category 5: 303(d) listed waters for pH.

The rulemaking information is posted at:

<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/r1200Z.aspx>. DEQ will use the feedback received during the public comment period to finalize the draft permit for consideration by the EQC in early 2021.

## **5.2. Water quality sampling for tear gas in Portland**

Repeated use of tear gas by law enforcement agencies in Portland during recent racial justice protests prompted DEQ to ask the City of Portland to test samples of stormwater in the downtown area. A report from the Portland Bureau of Environmental Services found elevated levels of zinc, barium and perchlorate elements in tear gas. DEQ is working with the city on next steps to address water quality and other environmental concerns. DEQ is also working closely with the Oregon Health Authority regarding additional steps that might be taken in regard to tear gas impact on public health. The use of tear gas has been questioned by Congressman Blumenauer and state Rep. Power, who have asked the EPA for additional water and sediment testing.

## **5.3. 900-J General Permit for Seafood Processors**

After many years of work, DEQ has issued the updated 900-J general permit for discharges from seafood processing facilities. Many DEQ staff have worked on this permit over the years, and there have been multiple draft permits issued for public comment, leading to further revisions and refinement of the permit. Completing work on this permit will begin a next phase of work with processors, who are given compliance periods to implement the new permit.

## **6. Eastern Region**

### **6.1. Chemical Waste Management – Radioactive waste disposal enforcement (Gilliam County)**

DEQ has been working with the Oregon Department of Energy to investigate the illegal disposal of naturally occurring radioactive waste at the Chemical Waste Management landfill outside Arlington.

Based on this investigation, DEQ issued Chemical Waste Management a \$60,000 penalty in August for illegally disposing of radioactive waste and failing to screen hazardous waste for radioactivity as required by its hazardous waste permit. DEQ also issued a \$303,856 penalty to OWL Inc., the waste hauling company that brought the waste to the landfill for disposal. Most of OWL's penalty, over \$300,000, is the economic benefit, or amount the company gained by disposing of it at Chemical Waste Management rather than a landfill that's permitted to accept it.

These are not new violations, they are for the same occurrence ODOE cited Chemical Waste Management for in February 2020; however, ODOE and DEQ have different authorities, which is the reason for the different enforcement timelines. DEQ assessed penalties for violations of rules under DEQ's authority; specifically, Oregon's solid and hazardous waste rules.

The facility is no longer receiving the waste and has implemented improved radiation screening procedures for waste coming into the facility. The DEQ enforcement action includes an order for Chemical Waste Management to provide DEQ with a written statement of what procedures the facility currently has in place, or plans to implement, to ensure compliance with DEQ requirements.

In consultation with DEQ and other state agencies, ODOE determined the waste in its current location poses no immediate threat to workers, the public or the environment. Additionally, ODOE has required Chemical Waste Management to complete a risk assessment to evaluate potential past, present and future risk. ODOE will be reviewing that assessment for completeness and issuing it for public comment after review is complete.

## **7. Northwest Region**

### **7.1. Columbia Pacific Bio Refinery air permit modifications (Clatskanie)**

On June 30, 2020, DEQ approved the renewal of and modification to a Standard Air Contaminant Discharge Permit for Cascade Kelly Holdings, LLC, doing business as Columbia

Pacific Bio-Refinery, transloading facility in Clatskanie. On Aug. 28, 2020, DEQ received a Petition for Reconsideration from Columbia Riverkeeper, NW Environmental Defense Center and Neighbors for Clean Air. DEQ is assessing the petition and has 60 days to respond.

### **7.2. Willamette Cove Upland Site (Portland)**

DEQ has proposed a cleanup plan to restore the upland portion of the Willamette Cove property for safe use as a nature park planned by Metro, the property owner. The riverfront property stretching 3,000 feet on the northeast bank of the Willamette River in the St. Johns area has a history of development and use spanning over 100 years. Soil contamination throughout the approximately 20-acre site exceeds acceptable levels for both human health and ecology, including elevated levels of contamination, called hot spots, for dioxins and furans, metals, PAHs and PCBs.

Under the cleanup plan, the Port of Portland, former owner and operator on the site, will excavate and dispose hot spots for humans and metal hot spots ecology offsite at a permitted landfill. The Port will consolidate remaining contamination above risk-based levels under an engineered cap. This cleanup work follows an early removal action in 2005-2006 in which the Port removed human health hot spots.

The Port will implement cleanup of the riverbank and in-water area working with EPA as part of the Portland Harbor Superfund Site. A six-month public comment period on the proposed cleanup plan for the Willamette Cove Upland closed Aug. 31, 2020, and DEQ is currently in the process of reviewing and responding to comments. DEQ plans to select a final cleanup plan, officially called a Record of Decision, in early 2021.

### **7.3. Astoria Marine Construction Company (Astoria)**

Cleanup construction is underway at the Astoria Marine Construction Company property, including removal of elevated levels of contamination, called hot spots, in sediment and soil for offsite disposal. AMCCO will cap the upland and the in-water area with clean sand. In 2012, EPA deferred a Superfund listing with the condition that DEQ lead the remedial investigation and cleanup. The remedial investigation found that past operations had contaminated the upland soil and nearshore sediment in the adjacent Lewis and Clark River, near Astoria. DEQ issued its selected cleanup plan, known officially as a Record of Decision, for AMCCO in February 2017. The cleanup plan incorporated input from tribal governments and local community members.

The consent judgement requires AMCCO to implement the selected cleanup and a restoration plan reached between tribal, federal and state natural resource trustees. DEQ will continue to communicate with trustees and the community on project milestones. DEQ anticipates that

AMCCO will complete cleanup construction by November 2020. DEQ will monitor performance of the in-water cleanup in the following years.

#### **7.4. NW Metals scrapyards fire (Portland)**

DEQ continues follow-up work on the NW Metals facility in Northeast Portland. The court ordered NW Metals to cease operation of its shredder on March 4, 2020, as part of a preliminary injunction DEQ pursued to bring the facility into compliance after exhausting our regulatory options through our civil enforcement process.

The judge ordered NW Metals to obtain an air quality permit from DEQ before being allowed to operate the shredder on site. To date, NW Metals still has outstanding compliance issues associated with water quality, solid waste and environmental clean-up activities at the site. These requirements were also a part of the court order/preliminary injunction.

DEQ has been drafting an Air Contaminant Discharge Permit for NW Metals, which includes working with Cleaner Air Oregon to evaluate air toxics emissions from the facility. On Aug. 16, 2020, DEQ received another permit application from NW Metals for another site, along Columbia Boulevard in north Portland. NW Metals indicated its intent to relocate all operations to this new location.

NW Metals remains unable to operate as an auto dismantler following the Department of Motor Vehicles' suspension of the facility's dismantler certificate on June 23, 2020. DEQ has issued a pre-enforcement notice to NW Metals because without the DMV dismantler certificate, NW Metals is now a solid waste disposal site and must obtain a DEQ solid waste permit or remove the waste from the current site. In addition, some of the material in the waste stored at the current site appears to contain asbestos waste materials so DEQ has asked NW Metals to conduct an asbestos survey for the waste on site and if asbestos is identified, to hire a licensed asbestos abatement contractor to properly remove the waste materials.

DEQ has also informed NW Metals that a solid waste permit is required at the proposed location and is providing information on application materials needed to obtain a DEQ solid waste permit.

#### **7.5. Portland Gas Manufacturing Site cleanup (Portland)**

Starting July 2020, NW Natural began work to clean up contaminated sediment at the former Portland Gas Manufacturing site within the Willamette River in downtown Portland. This work addressed historical contamination resulting from gas manufacturing operations along the west bank of the river from the mid-1800s to early 1900s.

In late July, the cleanup team discovered three World War II-era munitions. Work immediately ceased so the work team could establish a plan to proceed safely. During this time, there was no risk to public safety. Explosive ordnance disposal personnel from the 142nd National Guard base in Portland picked up the munitions for disposal. It is unclear how these munitions came to this part of the river. However, the area was used for docking naval ships under repair during World War II. NW Natural, in consultation with a firm experienced in munitions disposal, developed a plan to resume work. DEQ approved this plan, and the cleanup team was able to resume dredging the week of Aug. 17, 2020.

As of Sept. 1, 2020, all dredging work is complete. Approximately 4,700 cubic yards of contaminated sediment were removed in total. The cleanup team has begun capping the area with clean sand and gravel. Activated carbon will be added to a portion of the cap to increase effectiveness. DEQ has kept in regular communications with tribal governments, legislators, EPA, state and local agency partners, community groups and businesses and residents near the work area.

## **8. Western Region**

### **8.1. Riverbend Landfill (McMinnville)**

Riverbend Landfill is three miles southwest of McMinnville. It has been in operation since 1981 and Waste Management has owned and operated the landfill since 1998. The landfill covers 87 acres of a 700-acre property. The company proposed expanding the landfill by 29 acres. On Aug. 21, 2020, Yamhill County denied the land use permit for the expansions.

On Sept. 4, 2020, DEQ met with Waste Management to discuss the program's plan to return the company's expansion application due to it not having land use approval. DEQ is not certain how Waste Management plans to proceed at this point, as they could re-apply if they still want to try to expand.

## **9. Oregon Environmental Protection Act**

An updated OEPA summary table is attached to this report as Attachment C. In addition, a detailed report concerning new federal rules that weaken elements of the federal Clean Water Act Section 401 programs is included as Attachment D, and a detailed report regarding federal vehicle emission standards is included as Attachment E. For both topics, DEQ recommends that the commission remain informed, and the agency remain engaged, in state, regional and federal activities; however, there is no specific additional action recommended for the commission at this time.

**10. AFSCME Local 3366: DEQ union resolution for racial justice**

In August, the union representing DEQ staff, AFSCME Local 3366, passed a resolution for racial justice. The resolution, included here as Attachment F, calls for specific actions by DEQ to address internal and external racial inequities, and ongoing engagement with staff and management on these issues.



**ARCHIVES DIVISION**

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# RULES COORDINATOR AND DELEGATION OF RULEMAKING AUTHORITY FORM

Fill out the form with 1–5 Rules Coordinators and all Delegated Signing Authorities, and submit it to the Archives Division. There will only be one form on file at a time per OAR chapter. If you need to add or remove names, submit a new form listing all active Coordinators and Authorities. This will supersede the previous form.

EFFECTIVE DATE: \_\_\_\_\_

*This form must be on file with the Publications Unit, under the Oregon Secretary of State, to be effective.*

## RULES COORDINATOR

According to ORS 183.330(2):

Each state agency that adopts rules shall appoint a rules coordinator and file a copy of that appointment with the Secretary of State. The rules coordinator shall:

- (a) Maintain copies of all rules adopted by the agency and be able to provide information to the public about the status of those rules;
- (b) Provide information to the public on all rulemaking proceedings of the agency; and
- (c) Keep and make available the mailing list required by ORS 183.335(8).

\_\_\_\_\_ AGENCY NAME CHAPTER NO.

\_\_\_\_\_ AGENCY ADDRESS

\_\_\_\_\_ (1) Rules Coordinator, *print name* signature date

\_\_\_\_\_ OIM username email phone

\_\_\_\_\_ (2) Rules Coordinator, *print name* signature date

\_\_\_\_\_ OIM username email phone

\_\_\_\_\_ (3) Rules Coordinator, *print name* signature date

\_\_\_\_\_ OIM username email phone

\_\_\_\_\_ (4) Rules Coordinator, *print name* signature date

\_\_\_\_\_ OIM username email phone

\_\_\_\_\_ (5) Rules Coordinator, *print name* signature date

\_\_\_\_\_ OIM username email phone

\_\_\_\_\_ Authorizing person, *print name* signature date

*The signature of the agency's authorized signer who has legal authority to approve rulemaking filings, appoint agency rules coordinators or delegate rulemaking authority.*



State of Oregon  
Department of Environmental Quality

Memorandum

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**Date:** Sept. 10, 2020  
**To:** Environmental Quality Commission  
**From:** Stephanie Caldera, Commission assistant  
**Subject:** Commission's annual self-evaluation

**Why this is important** The Oregon Environmental Quality Commission must complete an annual self-evaluation. The survey gives commission members the opportunity to review their processes and procedures and DEQ information to refine and improve commission support. The results of the survey are included in the DEQ Key Performance Measures report.

**Survey results** The performance measure has a summary target of 100 percent, and the 2020 self-evaluation, assessing the 2019 meeting year, had a summary average total of 92 percent. The compiled results, including narrative responses, are included with this memo.

**Areas for improvement** In the survey, several questions scored lower than average. Two of these questions, 8 and 9, relate to opportunities for the commissioners to collaborate with partner entities or governments, and for the commissioners to participate in agency hearings and meetings. Commissioners also indicated that DEQ can do more to ensure key communications are provided and commissioners are kept up-to-date on high-profile issues.

Many of the narrative responses indicated an interest in revisiting the commission's engagement opportunities – both formal and informal – with the public and other interested parties. DEQ will follow-up with individual commissioners and the commission as a body to discuss communications, outreach, engagement and collaborative multi-entity work that could better involve the commission.

**Next steps and commission involvement** At the request or direction of the commission, DEQ may provide additional training, information and support to the commission in response to the survey results. The results will also be included in DEQ's annual Key Performance Measures report to the Oregon Legislature.

**Attachments** 1. Compiled survey results, 2019 meeting year

## **EQC self-evaluation survey results for 2019 meeting year**

Questions 1 through 12 are multiple choice and used to create a numerical score for the annual survey. Questions 13 through 15 are narrative and help DEQ improve commission meetings and support going forward.

Commissioners were given the following options for the multiple choice responses:

- None of the time (0 percent)
- Some of the time (40 percent)
- Most of the time (80 percent)
- All of the time (100 percent)
- Do not know (no percentage assigned)

**The commission scored an overall 92 percent for the 2019 meeting year, based on the responses to questions 1 through 12. Averaged responses for each question are shown below.**

**1. The commission is kept updated about DEQ's key communications.**

- *84 percent*

**2. The commission is appropriately involved in policy-making activities, such as rule adoption.**

- *96 percent*

**3. DEQ's budget and policy option packages are aligned with its mission and goals.**

- *96 percent*

**4. The commission reviews all proposed agency budgets.**

- *100 percent*

**5. The commission is appropriately informed about agency budgets and how resources are used at DEQ.**

- *92 percent*

**6. Based on the budget and financial information presented to the commission at its regular meetings, DEQ adheres to accounting rules and other relevant financial controls.**

- *100 percent*

**7. I am aware of and act in accordance with my role as a public official**

- *96 percent*

**8. The commission encourages collaboration and has opportunities to collaborate with other state, local, tribal and federal entities.**

- *84 percent*

**9. DEQ offers commission members opportunities to participate in hearings, informational meetings and other agency events.**

- *72 percent*

**10. The commission reviews the director's performance expectations to ensure that they are current.**

- *100 percent*

**11. The commission gives the director an annual performance review.**

- *92 percent*

**12. The agency's mission and high-level goals are current and applicable.**

- *92 percent*

**Questions 13, 14 and 15 are narrative. The responses below are taken directly from the commissioner responses.**

**13. How would you like the commission to engage with the public, whether as part of the formal meeting agenda or in more informal settings?**

- I think there can and should be a place for both. The formal interaction during EQC meetings seems cumbersome and one-sided. I would like to have the ability to interact more with the public. Understanding the challenges, I also would like to have more public comment timely and specific to an action.
- This is particularly difficult during the COVID pandemic. Less structured interactions are good when possible, but if they are after a whole day of meetings it does make a very long day for the Commissioners.
- This is a challenging question to ask this year, however, I think this is one we've struggled with as we've held an expectation that we would develop one way to engage with the public in our meetings. I think we need to create space to be more flexible in our engagement based on the time, location, space, and interests of the communities we are meeting. This does necessitate more planning in advance of meetings. As we return to in-person meetings. I would like to see a more intentional effort to talk about how we might engage the public in planning any given meeting. I don't assume we will always take up the opportunity, but its important to have the conversation. If this is supported in a structured way, I think we can appropriately weigh the merits of a handful of community engagement approaches prior to planning each meeting.

- I would like to try to improve engagement. I appreciated the fact that we tried something new with adding more public comment periods in the EQC meetings although these did not necessarily have the desired effect and instead encouraged more comments from a few dedicated individuals. Subsequently, I do not want to continue that practice or make it more pointed and only include these types of ‘open comment’ periods during briefing type presentations of major new policies that are getting introduced prior to voting. This could help include more perspectives on a particular issue with enough time for follow up.
- I think the aspect that is missing is that engagement is typically bi-directional sharing of knowledge and experience. This might happen between the public and DEQ staff during their daily operations, but it does not happen at the EQC meeting. So I would be in favor of changing the custom that public comment sessions are only listening sessions and try to make these about engaging in discourse on a topic brought forth by the public (albeit a timed discourse).
- I like it in the formal meeting, but we need more town halls in the future once pandemic is over.

**14. What environmental policy topics would you like DEQ, or partners, to present to the commission in the next one or two years as informational or learning opportunities, not necessarily connected to any expected commission action?**

- I want to fully understand TMDL development and oversight. I want to specifically understand the state and federal role in adoption and regulation. I also want to know how/if TMDL’s are reviewed and/or adjusted.
- I remain interested in the recycling program, the status of recycling, international pressures and whether anything can be done from a policy or rulemaking perspective to encourage public/private partnerships that might increase recycling or the market for recycled products.
- We annually meet in conjunction with Forestry and Agriculture. While I wouldn’t want these “co”-meetings to dominate the schedule it seems they could be intermingled with meetings to discuss issues in common with the Department of Fish and Wildlife and the Environmental Health section of the Oregon Health Authority.
- I would like to better understand our recycling system.
- The breadth of DEQ is quite large, but I would personally like to see how different polices and practices have had impact on environmental quality. And, what we can learn from policies that worked well and those that haven’t. So ‘lessons learned’ on water quality, land quality, air quality, etc.
- An update on the recycling program and how it is being rebuilt in the wake of China’s National Sword policy.
- Continued attention on ozone and other air pollutants that are trending in the wrong direction.

- Update on Cleaner Air Oregon and how that policy is unfolding and whether it has had the desired effect.
- Water quality updates and collaborations with other agencies to try to reduce non-point source pollutants.
- Programs that are reducing GHG emissions
- An update from the Department of Forestry regarding the distance of logging from waterways since OR allows the narrowest corridor, but this is possibly an important resiliency factor for water quality and water temperature.
- Mercury from abandoned mines
- CAFO issues
- Klamath Basin water issues in light of dam removal problems

**15. What are the most critical environmental policy actions you think that the commission, and DEQ, should accomplish in the next one to two years?**

- A robust and adequately funded Emergency Response Program
- A common language and understanding of water quality in the state.
- A prioritization of water quality improvement projects, based in part on attainability. Additionally, partnerships with landowners and other public agencies to work on water quality should be (or continue to be) a priority.
- Get the Department on a path to actively improving water quality in impaired watersheds especially from nonpoint sources, in coordination with partners. It seems to me that this is the area where that state is most stuck and not making progress. It seems that other interests have effectively prevented the reduction of nonpoint source pollution in many areas. I think an important part of this is being clear in our messaging that this is necessary to protection aquatic resources that Oregonians care about and to implement Oregon regulation and the Clean Water Act.
- Address climate change by reducing GHG emissions
- Reduce non-point source pollution in our waterways through collaborations with appropriate agencies, community projects, increasing tree/vegetation coverage near waterways, etc.
- Reduce drivers of ozone concentrations in OR airsheds which will require reducing ozone precursors (vehicular emissions, etc).
- Policies and practices that improve water quality and quantity that promotes salmon populations and with particular attention paid to Klamath Lake.
- Eliminate aerial herbicide spraying in watersheds
- Increase revolving funds that will help communities upgrade their wastewater treatment
- Fix the recycling system
- Given the budget crisis caused by COVID-19, it will be important to think creatively about how to develop new funds (like the revolving funds) that will help

municipalities and businesses upgrade systems or do the practices needed to protect environmental quality. The next few years are going to require new and creative ways to implement environmental policies and practices.

- Evolve the policies and management practices that can reduce the inputs that lead to nutrient loading in surface waters that are contributing to harmful algal blooms in our freshwater and marine systems.
- Stronger effort on Willamette River issues
- Stronger focus on air emissions from diesel trucks in Portland metro, we continually target utilities and industry but vehicle emissions which are the biggest problem get off lightly, unfortunately we are going after the deep pockets rather than the biggest offender

**Oregon Environmental Protection Act: Summary Tracker**  
*This document intended for DEQ staff use and is informational only*

**Air Quality:** *Clean Air Act*

*Note: Topics in bold have been updated since the last report to the EQC. Topics with an asterisk (\*\*) are new to this document.*

<b>Topic</b>	<b>Brief Description</b>	<b>Next Important Action</b>
Hazardous Air Pollutants	For many years, EPA’s policy was that a major source remains subject to major source requirements even if it reduces its emissions after MACT is applied (“Once In, Always In”). EPA has proposed a rule to replace this policy to allow the source to reclassify as an area source after it reduces its emissions below the threshold.	Comment period closed on Nov. 1, 2019.
GHG Emissions from Power plants  <i>Formerly Clean Power Plan, now Affordable Clean Energy Plan</i>	EPA released the final ACE Rule in June 2019. The final rule: <ul style="list-style-type: none"> <li>• Repealed the Clean Power Plan, which was aimed at lowering emissions from the power sector;</li> <li>• Created a new rule for energy efficiency measures that individual sources will need to install;</li> <li>• Updated the foundational implementing rules for existing source emissions guidelines under Clean Air Act Section 111(d), which were promulgated in 1975.</li> </ul>	The new rule became effective Sept. 6, 2019.  <i>EQC received a report Nov 14, 2019.</i>  Note: There is pending litigation associated with this rule.

<b>Topic</b>	<b>Brief Description</b>	<b>Next Important Action</b>
<p>New Source Review (NSR): Project Emissions Accounting</p>	<p>The current NSR accounting process studied whether a modification by itself would result in significant emissions increases at Step 1, with no consideration of other decreases. In August 2019, EPA issued a proposed rule that would allow emission decreases from a proposed project at an existing major stationary source to be accounted for at Step 1 of the NSR applicability process.</p>	<p>A comment period for the proposed rule ended Oct. 8, 2019.</p> <p>EPA released a draft guidance memo updating the definition of “begin actual construction” for the NSR regulations.</p>
<p>GHG Vehicle Emission Standards/California’s Waiver</p>	<p>EPA and NHTSA release a final rule in which NHTSA determines that California’s GHG standards and Zero Emission Vehicle program are preempted under Energy Policy and Conservation Act. EPA additionally withdrew California’s waiver to set its own greenhouse gas emissions standards.</p>	<p>EPA published the final rule Sep. 27, 2019, and will be effective Nov. 26, 2019.</p> <p><i>EQC received a report January 23, 2020.</i></p> <p>Note: There is pending litigation associated with this rule.</p>

Topic	Brief Description	Next Important Action
<p><b>National Vehicle Fuel Efficiency Standards</b></p>	<p>NHTSA and EPA concurrently released a final Safer Affordable Fuel-Efficiency (SAFE) vehicle standards for model years 2021 to 2026, on 3/31/2020, to replace the more stringent standards negotiated in 2012 and approved in the 2017 mid-term evaluation.</p> <p>This final rule contains the revised CAFE and GHG standards, which increase in stringency 1.5% each year, down from 5% each year under prior standards.</p> <p><b>On August 17, 2020 California announced voluntary framework agreements with five automakers to continue to produce cars and trucks through 2026 with the same rates of efficiency as the former standards.</b></p>	<p>Note: There is pending litigation associated with this rule.</p> <p>The new rule was published in the Federal Register on April 30, 2020 and will be effective on June 29, 2020.</p> <p><i>The EQC will receive a brief report on this rule at its September 2020 meeting.</i></p>
<p><b>Methane Standards for New Oil and Gas Facilities</b></p>	<p>EPA has published a proposed rollback of methane regulations, which would rescind emissions limits for methane on oil and gas production and processing. It would also cease regulating emissions during transmission and storage of the gas, among other changes.</p>	<p><b>The EPA released its final Reconsideration Rule and Review Rule, which rescind VOC and methane standards for oil and gas facilities. This final rule will be effective 60 days after it is published in the federal register.</b></p>

Topic	Brief Description	Next Important Action
<p>Mercury and Air Toxics Standards (MATS)</p>	<p>These standards regulate mercury emissions from power plants. Mercury is a powerful neurotoxin with severe impacts to children’s and fetal brain development. Coal-fired power plants are a significant source of mercury. Though Oregon has only one remaining coal-fired plant, the health benefits of this regulation are significant.</p> <p>On Feb. 7, 2019 EPA proposed to rescind the 2016 supplemental finding that it is “appropriate and necessary” to regulate mercury and other hazardous air pollutants emitted by power plants, after considering the cost of regulation, under the Clean Air Act. This finding is the legal foundation for MATS. EPA also proposed that co-benefits should be given less weight than other benefits during a cost-benefits analysis.</p> <p>On Dec 31, 2019, EPA’s Science Advisory Board released a draft report that recommended a new risk assessment be completed for the revised Supplemental Cost Finding and Residual Risk and Technology Review and any future mercury regulation.</p>	<p>Note: There is pending litigation associated with this rule.</p> <p>The EPA published the final rule withdrawing the “appropriate and necessary” on May 22, 2020. It will be effective 60 days after publication.</p> <p><i>DEQ is analyzing this final rule.</i></p>
<p><b>Ozone National Ambient Air Quality Standards</b></p>	<p>The CAA requires EPA to set national ambient air quality standards, NAAQS, for ozone and five other pollutants considered harmful to public health and the environment (the other pollutants are particulate matter, nitrogen oxides, carbon monoxide, sulfur dioxide and lead). In August 2019, EPA issued the Integrated Review Plan for the Review of the Ozone NAAQS.</p>	<p><b>On July 13, 2020, the EA announced that it is proposing to retain the ozone NAAQS. This decision will be open for public comment, following its publication in the Federal Register.</b></p>

<b>Topic</b>	<b>Brief Description</b>	<b>Next Important Action</b>
Greenhouse Gas Emissions from Landfills	EPA issued rule on Aug. 26, 2019, to delay implementation of emission guidelines that apply to existing landfills. This rule conflicts with court-ordered schedule of compliance.	DEQ joined multistate coalition challenging rule Oct. 25, 2019. Also seeking to enforce court order separately.  Note: There is pending litigation associated with this rule.
Greenhouse Gas Emissions from Trucks and Tractor Trailers	EPA adopted the standards in 2016, which were challenged by truck manufacturers. EPA is reconsidering the standards, and the challenge has been held in abeyance for over two years while EPA conducts its review.	EPA decision on whether to repeal the standards.  Note: There is pending litigation associated with this rule.
Limitations on Use of Hydrofluorocarbons as Refrigerant Replacement of Ozone-Depleting Substances	<p>EPA issued guidance in April 2018 reducing limitation on use of hydrofluorocarbons , or HFCs, in what is known as the Significant New Alternatives Policy.</p> <p>EPA’s guidance eliminated all limitations on use of HFCs as alternatives.</p> <p>In February, EPA released the final rule removing requirements for leak repair and maintenance of appliances using 50 or more pounds of refrigerant substitutes, such as HFCs. DEQ’s Materials Management program is analyzing the impacts of this rule.</p>	<p>DEQ joined multistate coalition to challenge the guidance as an illegally promulgated rule. Note: There is pending litigation associated with this rule.</p> <p>The final rule will go into effect 30 days after publication in the Federal Registrar.</p> <p><i>DEQ is analyzing this final rule.</i></p>

<b>Topic</b>	<b>Brief Description</b>	<b>Next Important Action</b>
Wood Stove Emission Standards	<p>EPA issued proposed rule Jan. 14, 2019, to extend the compliance deadlines when new wood stoves must meet stricter certification standards, to control their particulate emissions.</p> <p>The next deadline is for implementation of the Step 2 limits, which would required a 56 percent reduction in particulate matter missions from Step 1 for wood and pellet heaters, a roughly 70 percent reduction for hydronic heaters, and an 84 percent reduction for forced-air furnaces.</p> <p>The EPA is now proposing to extend the compliance deadline to November 30, 2020 for new emission requirements, due to sales disruptions caused by the COVID-19 pandemic. The original deadline for compliance was May 15, 2020.</p>	Waiting on EPA decision on proposal.
Heavy-duty Truck “Glider Kit” Rule	<p>In 2017, EPA proposed a repeal of the emissions requirements for gliders. In 2018, the EPA announced that it would not enforce the annual cap of 300 gliders per manufacturer until at least 2019. It last withdrew that announcement.</p> <p>On Dec 5, 2019, EPA’s Office of Inspector General released a report finding that the agency did not develop the required cost benefit analysis to assess air quality impacts on children’s health for the proposed Glider Repeal Rule. The agency has agreed to do this analysis should it take any further action on the proposed rule repeal.</p>	Waiting on EPA decision on proposed rules.

**Water Quality:** *Water Pollution Control Act and Safe Drinking Water Act*

*Note: Topics in bold have been updated since the last report to the EQC. Topics with an asterisk (\*\*) are new to this document.*

<b>Topic</b>	<b>Brief Description</b>	<b>Next Important Action</b>
<p>Waters of the United States</p>	<p>The Clean Water Rule defines which streams and wetlands the Clean Water Act protects. It extends Clean Water Act protection to rivers and streams where jurisdiction was previously unclear. In 2018, EPA and Army Corps proposed repealing the rule and returning to the pre-2015 regulations, while they developed a new definition of “waters of the United States (WOTUS).”</p> <p>The proposed rule revisions would have a potentially significant effect on implementation of Clean Water Act programs and implications for state programmatic activities that seek to maintain adequate protections for our water quality resources.</p>	<p>On April 21, 2020, the EPA and Army Corps published the new definitions of “Waters of the United State” in the Federal Register. The new rule becomes effective on June 22, 2020.</p> <p>In May, a coalition of 17 states, including Oregon, filed suit challenging the new rule.</p> <p><i>The EQC heard a report at the July 2020 meeting.</i></p>

Topic	Brief Description	Next Important Action
<p><b>401 Certifications Rulemaking</b></p>	<p>Pursuant to a Presidential Executive Order, EPA published substantial revisions to the federal regulations governing state’s issuance of 401 certifications for federally licensed or permitted projects.</p> <p>The published revisions would substantially affect states’ ability to issue meaningful certifications that ensure protection of the state’s water quality.</p> <p><b>On July 13, 2020 EPA published a final rule that would restrict the scope of the state review process to “point source discharges into waters of the United States.” The rule would also allow the federal licensing or permitting agencies to set a “reasonable period of time” for a state to review, effectively allowing the federal agency to decide whether a state has waived its right to make a determination.</b></p>	<p><b>Note: There is litigation associated with this rule.</b></p> <p><b>A final rule was published on July 13, 2020. The effective date of the new rule will be September 11, 2020.</b></p> <p><i>The EQC will receive a report on this rule at its September 2020 meeting.</i></p>
<p>Power Plant Effluent Limits</p>	<p>Steam power plant wastewater discharges include arsenic, lead, mercury, selenium, chromium, and cadmium, but current regulations do not contemplate these toxic metals. EPA finalized limitation guidelines in 2016, but there has been extensive litigation surrounding the rule and the later delayed implementation of the rule.</p> <p>EPA has proposed a rule revising the 2015 technology-based effluent limitations guidelines and standards. The proposal contains some exemptions for “high flow” facilities, low utilization boilers, and boilers retiring by 2028.</p>	<p>A comment period on these proposed rules ended on Jan 21, 2020.</p>



# Oregon Environmental Protection Act

## Report to EQC: CWA Section 401 Rules and Water Quality in Oregon

*HB 2250 of 2019 requires DEQ to regularly assess final change to federal environmental law to determine whether it results or will result in federal standards or requirements that are significantly less protective of public health, the environment or natural resources than baseline federal standards. When that occurs, DEQ must promptly inform the Environmental Quality Commission and recommend actions necessary to continue state implementation of standards and requirements that are at least as protective of public health, the environment or natural resources as the baseline standards.*

### Brief Summary

EPA published significant revisions to its rule governing states' 401 water quality certification programs that will drastically reduce states' ability to regulate waters within their own boundaries. The rule rewrites EPA's existing water quality certification regulations that have been in place for 50 years. It significantly alters state's broad authority to protect state waters by imposing unrealistic timelines for review, restricting what constitutes a complete application, limiting the scope of review to point source discharges, takes away state's abilities to enforce certification conditions, and limits conditions states can impose on certifications, further debilitating states' authority under section 401 of the Clean Water Act. EPA published the final rule in the Federal Register on July 13, 2010. The rule will become effective 60 days following publication, on September 11, 2020.

### Background

Section 401 of the Act provides that "[a]ny applicant for a Federal license or permit to conduct any activity ... which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate". Existing rules gives states broad authority to review the construction and operation of projects as a whole, in order to ensure projects do not violate state water quality laws. DEQ issues certifications for in-water dredge and fill projects regulated by the Army Corps of Engineers, hydroelectric facilities regulated by the Federal Energy Regulatory Commission and activities allowed under special use permits issued by the US Forest Service. DEQ evaluates all aspects of the actions proposed under the federal permits and ensures that the projects don't cause or contribute to violations of water quality standards. Water quality certifications address both numeric and narrative criteria and allow DEQ to address proposed actions that may affect multiple species of aquatic life.

The final rule was published July 13, 2020, in keeping with EPA's directives under the April 2018 [Executive Order 13868](#), "Promoting Energy Infrastructure and Economic Growth," which attributed states' actions under section 401 to hindering energy infrastructure projects, specifically for coal, oil, and natural gas facilities.

Specific implications of this rule include, but are not limited to:

- Limiting the scope of review to point source discharges to federally jurisdictional waters.
- Allowing the federal permitting agency to establish the "reasonable period of time" allotted for 401 review. The period of time may be established on a "case by case" basis, providing no certainty to DEQ of the required timelines. If the state cannot meet this timeline, the state waives its right to certify.
- Limiting information required of the applicant for what constitutes a complete application, and thus starting the time clock for DEQ action to either certify the project or waive its ability to include conditions on the permit.
- Requiring states to provide statements for each condition stating why that condition is necessary, including a direct citation to law.
- Only allowing states one inspection to take place prior to the operation of a project.
- Granting the federal agency the sole responsibility for enforcing the state's 401 conditions.

*This report is prepared as required by HB 2250 of 2019.*

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- The proposed rule may eliminate water quality trading as a least cost, market based option to comply with water quality standards as part of the water quality certification process.

## Final Action

EPA published the final rule in the Federal Register on July 13, 2020. The rule is effective on September 11, 2020.

## Key Considerations

The 401 water quality certification is in place to ensure a federally licensed or permitted project will meet state water quality standards and other requirements of state law. Curtailing the agency's ability to review projects' effects on water quality is by no means wholly protective of state waters. Because the rule limits water quality certifications to point source discharges only, the rule would remove the ability to regulate reservoir effects (such as increasing methyl mercury concentrations and the presence of harmful algal blooms), levels of downstream flow, improvements to fish ladders, control of post-construction stormwater pollution outside of urbanized areas governed by a Municipal Separate Storm Sewer System (MS4), groundwater, and several other aspects of potential water quality impacts from projects. These types of effects are not considered in either the permits issued by federal agencies nor by the Department of State Lands in its removal fill permit, which focuses on ensuring protection and the best use of Oregon's water resources for home, commercial, wildlife habitat, public navigation, fishing and recreational uses. In addition, imposing such restrictive timelines will require more staff.

## Impacts to Oregon

The narrowed scope of 401 certification will result in DEQ only being able to review point source discharges, and not diffuse runoff or water quality effects due to the project adversely affecting water quality within Oregon's waterways. Due to the very short timeframes action, DEQ could be in a situation where decisions would need to be made quickly, which could necessitate minimizing public input and DEQ's ability to evaluate potential impacts. Additionally, specifying that the federal permitting agencies have sole responsibility for compliance and enforcement removes DEQ's ability to know whether applicants are adhering to the conditions of the certification, which is written to prevent pollution to our waterways. Implementation of this rule will impact fishing and recreation in Oregon's waters. Conditions addressing mercury methylation in reservoirs, fish passage and flow impact both the abundance and the safety of fish available for human consumption and tribal rituals. The effects of this rule will be detrimental to Oregon's fisheries and wildlife, as well as to our recreational opportunities. Issuing certifications in a limited time frame will likely require DEQ to develop general conditions applicable to all projects without taking into account the significant variability among types of projects and sites. With a limited timeframe to review an application, DEQ will be limited in its ability to consider site specific data analysis and measures, which is detrimental to both the applicant and the environment. With more complex projects, DEQ will be hampered in its ability to tailor conditions specific to the project and specify conditions that may be needed to adequately protect aquatic species.

**Recommendation for EQC Consideration:**  Guidance  Legislative  Rulemaking  Litigation  Other

DEQ is continuing to evaluate the rule and prepare various contingencies, including coordination with sister natural resource agencies (e.g. DSL) for potential action(s) in response to the rule. Based on the narrowing of authority resulting from this rule, DEQ may need to look to programs outside of the 401 WQC program to provide equivalent environmental protection to what currently exists. DEQ expects to develop a more specific proposal for the commission over the next several months. It is likely that this proposal will require rulemaking, and it may require legislative action as well.

In July, the State of Oregon joined a multistate challenge to the 401 rule. DEQ staff are evaluating the EPA rule and determining procedures to comply with the rule's requirements, should it go into effect.

*This report is prepared as required by HB 2250 of 2019.*

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# Oregon Environmental Protection Act

## Report to EQC: EPA and NHTSA Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks

*HB 2250 of 2019 requires DEQ to regularly assess final change to federal environmental law to determine whether it results or will result in federal standards or requirements that are significantly less protective of public health, the environment or natural resources than baseline federal standards. When that occurs, DEQ must promptly inform the Environmental Quality Commission and recommend actions necessary to continue state implementation of standards and requirements that are at least as protective of public health, the environment or natural resources as the baseline standards.*

### **Brief Summary**

The Environmental Protection Agency (EPA) and the Department of Transportation's National Highway Transportation Safety Administration (NHTSA) finalized rules on June 29, 2020 to rollback fuel economy and greenhouse gas (GHG) emission standards for automobiles and light duty trucks.

### **Background**

The federal Clean Air Act preempts all states, except for California, from establishing their own motor vehicle emission standards. Section 177 of the Act allows states to adopt California's emission standards if they choose to do so. Oregon, including 12 other states, (Colorado, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Washington) and the District of Columbia have adopted California's emission standards. Oregon has been a Section 177 state since 2005, as it recognized the need to address pollution from vehicles.

Since 2012, the Obama Administration, the State of California, and the major automakers have agreed on a single national program that regulates greenhouse gas and fuel efficiency standards from all light duty vehicles with stringent emission standards. This harmonized standard provided regulatory certainty for automakers and lowered costs to consumers for the last seven years. Recent actions by the Trump Administration have resulted in a rollback of these requirements. In addition, on September 19, 2019, EPA and NHTSA revoked California's waiver to set more stringent vehicle emission standards, specifically with regards to its program's greenhouse gas emission standards and Zero Emission Vehicle (ZEV) program.

### **Final Action**

This final rule rolling back the national fuel economy and greenhouse gas emission standards for model years 2020 through 2026 will lead to an increase of 3.8 billion tons of CO<sub>2</sub>eq through 2050. It will be significantly less protective of public health, the environment or natural resources than baseline federal standards, as defined in HB 2250 of 2019.

### **Key Considerations**

The effect of these rules will not only weaken fuel efficiency standards, leading to higher petroleum use, but also associated greenhouse gas emissions. In addition, the revocation of California's waiver is unprecedented, as no administration has ever revoked a state's authority to regulate its own air quality in the past. The action affects states' ability to enforce its tailpipe GHG standards and also interferes with its ability to enforce the zero-emission vehicle (ZEV) mandate, which requires automakers to manufacture and deliver a certain percentage of zero emission vehicles to ZEV states. In response, Oregon and 22 other states have filed a lawsuit suing the federal administration over its revocation of California's waiver.

*This report is prepared as required by HB 2250 of 2019.*

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As a result of the waiver revocation and weakening of the federal standards, California recently finalized a voluntary bilateral agreement and framework with six automakers (Ford, Honda, VW Group, BMW, Rolls Royce, and Volvo) that supports continued annual reductions of vehicle greenhouse gas emissions through the 2026 model year and encourages innovation to accelerate the transition to electric vehicles, that are nearly four times as effective as the revised federal standards. It also provides automakers some regulatory certainty for the production of their vehicles during the ongoing litigation and provides them flexibility in meeting the emissions reduction targets. Oregon, along with the other Section 177 states that have adopted California's cleaner vehicle standards have indicated to the manufacturers they support the Framework agreements.

### Impacts to Oregon

Oregon has an aggressive long-term GHG emission reduction goal: 80% below 1990 levels by 2050. The transportation sector is the single largest source of GHG emissions – comprising nearly 40% of statewide emissions and rising. To meet Oregon's climate goals, the approximately 30 million tons of GHG reductions that come from the low and zero emission components of the California standards through 2035 is critical. While these standards focus on reducing GHGs, they also decrease criteria pollutants, such as ozone and air toxics which Oregon relies on to meet the National Ambient Air Quality Standards and state air toxics benchmarks.

### Recommendation for EQC Consideration: Guidance Legislative Rulemaking Litigation Other

DEQ recommends the following:

- The agency continue to support the Framework agreements established between California and the automakers.
- The agency continue to implement the ZEV mandate to provide regulatory certainty and ensure the associated environmental and public health benefits are realized in Oregon.
- The agency and commission provide technical support to the Attorney General and Department of Justice in their pursuit of litigation challenging the revocation of California's waiver.

*This report is prepared as required by HB 2250 of 2019.*

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Item G 000035

*DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water*

## Addressing Racial Injustice at DEQ

### WHEREAS

Black Lives Matter; and

1. Whereas racism is an environmental health issue. Communities of color are disproportionately exposed to environmental contaminants such as pesticides<sup>1</sup>, lead<sup>2</sup>, nitrogen dioxide<sup>3</sup>, as well as hazards<sup>4</sup> such as drinking water violations<sup>5</sup> and living near hazardous waste facilities.
2. Whereas Black people in America are 79% more likely than whites to live in neighborhoods where industrial pollution is suspected of posing the greatest risk to their health<sup>6</sup>.
3. Whereas the United States' environmental laws, regulations and policies are not applied uniformly, resulting in communities of color being exposed to elevated health risks.
4. Whereas DEQ historically has not and currently does not allocate meaningful financial or staff resources to advancing equity and dismantling institutional racism within the agency.
5. Whereas DEQ does not have a racial equity plan or policy, does not have a statement on diversity, equity and inclusion, and has not conducted an internal racial equity audit.
6. Whereas some Black DEQ employees have experienced racial discrimination at work.
7. Whereas DEQ has historically and continues to be a white-led organization. Black, Indigenous and people of color make up only 14% of DEQ permanent employees, compared to 25% of the population statewide and 31% of the population in Multnomah County (where the majority of DEQ employees are located)<sup>7</sup>. Black employees make up just 1% of DEQ's workforce.
8. Whereas implicit bias has been scientifically proven to influence hiring decisions and reduce workplace diversity in spite of the best intentions of hiring managers and equal employment law, with studies showing that typically caucasian sounding names and male names receive significantly greater response rates than names associated with women and minorities<sup>8</sup>.
9. Whereas in the history of the United States labor movement, advances in legal protections for workers have not always been enjoyed equitably by all groups, including women, racial minorities, and the disabled community.
10. Whereas as a Union, we
  - a. strive to create and maintain an equitable and safe workplace,
  - b. promote learning about racism and bias and how to talk about and address these issues,
  - c. believe in fair and inclusive hiring practices, and
  - d. are committed to a diverse workplace.
11. Whereas DEQ's policies and programs have direct and indirect impacts on community members, and status quo methods of gathering public input about how marginalized communities are affected by them are insufficient and do not center their experiences and knowledge.
12. Whereas Black People in America face systemic oppression in the education system and other barriers to gaining the skills, qualifications and education required for professional careers at the Oregon Department of Environmental Quality.

### THEREFORE

#### Be it resolved:

That AFSCME Local 3336 requests DEQ to:

1. Hire a full-time Environmental Justice Coordinator position at DEQ, with accompanying budget to conduct their work and meaningful decision-making authority to influence and guide policy at DEQ. This position could also include:

- a. On-going recommendations and evaluation of DEQ's impact on environmental justice communities.
- b. On-going training, with clear direction, and conversations about environmental justice in DEQ's daily work.
2. Provide paid time for staff to invest in education and outreach to BIPOC communities, including:
  - a. Invest in environmental science educational programming specifically for high school and college age BIPOC to encourage them to consider DEQ technical careers.
  - b. Reinstate and expand the historical mentorship program that connected high school students of color to DEQ employees.
  - c. Participate in the Urban League of Portland's Workforce Development Program, Camp ELSO, and Groundwork Portland.
  - d. Provide paid internships within each division (Air, Lab, Land, Water) solely for Black Indigenous People of Color to ensure that BIPOC have opportunities for gaining experience without previous requirements.
3. Conduct an audit of the agency's hiring, retention, and DEI (diversity equity and inclusion) practices, using a qualified and independent third party that specifically includes recommendations on improving the respective practices. Develop a plan with a timeline for how the agency seeks to implement the recommendations, and report out to agency staff the recommendations, plan and progress.
4. Require that all DEQ staff complete training and workshops on environmental justice, racial literacy and sensitivity, microaggressions, and Oregon's racist history, in addition to the implicit bias training, with a third party facilitator. We advocate for training at all management levels.
5. Support more equitable and inclusive stakeholder engagement that reduces barriers to participation on advisory committees, including but not limited to compensation for: meals, childcare, travel support, stipends, translation/transcreation services, and virtual participation channels.
6. Conduct a recruitment for a Diversity, Equity and Inclusion Director at the agency, separate from HR, with accompanying budget to conduct their work and with meaningful decision-making authority to influence and guide policy at DEQ. The recruitment process should involve represented members of the DEI committee.
7. Advocate for the creation of an Environmental Justice Citizen Oversight Committee to review and provide input into major DEQ decisions, audit DEQ protocols and processes, provide input for how our work can better protect the most vulnerable, and hold the agency accountable to their Environmental Justice goals.
8. Support BIPOC communities at DEQ through affinity groups (employee resource groups), including paid time for attendance and training.
9. Address all of these demands within 2 years of the adoption of this resolution, or less, and agree that DEQ management meets quarterly with the Local (AFSCME 3336) to provide status and progress updates on above resolutions in a transparent manner.

**Passed by the membership of AFSCME Local 3336 on 8/19/2020**

## **REFERENCES**

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2. Robert Bullard et al, 2007, "Toxic Wastes and Race at Twenty: 1987-2007" <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>

3. National Patterns in Environmental Injustice and Inequality: Outdoor NO<sub>2</sub> Air Pollution in the United States, University of Minnesota and the National Science Foundation, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0094431>
4. The Atlantic: Trump's EPA Concludes Environmental Racism is Real, <https://www.theatlantic.com/politics/archive/2018/02/the-trump-administration-finds-that-environmental-racism-is-real/554315/>
5. Oregon Public Broadcasting: Study: Safe Drinking Water Violations are Higher for Communities of Color, <https://www.opb.org/news/article/safe-drinking-water-act-violations-communities-color-study/>
6. David Pace, "AP: More Blacks Live with Pollution," *Associated Press*, December 14, 2005. <https://www.africanamerica.org/topic/ap-more-blacks-live-with-pollution>
7. As of August 2019.
8. Bertrand, Marianne and Sendhil Mullainathan. "Are Emily And Greg More Employable Than Lakisha And Jamal? A Field Experiment On Labor Market Discrimination," *American Economic Review*, 2004, v94(4,Sep), 991-1013. Accessed at <https://www.nber.org/papers/w9873>