
Date: July 14, 2020
To: Environmental Quality Commission
From: Richard Whitman, Director
Subject: Item G: Director's Report (Informational)
July 16-17, 2020, EQC meeting

1. Agency Management

1.1. EDMS updates

In early May, the project Steering Committee met and approved a 7.5-month extension to the project's overall timeline. This adjustment is in response to lessons learned during the Wave 1 data collection and testing, and the changes were communicated to staff and the regulated community in June. The project remains a key priority for the agency, and DEQ has received the required approvals from the state fiscal and IT oversight offices to proceed revised schedule. Wave 1 will go live at the end of this year under the new schedule, and is currently in the release/testing phase.

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. Fleet vehicle updates at Portland office

When vehicles in state service reach the end of their useful life, as determined by the Department of Administrative Services, agencies can acquire new vehicles, which helps improve overall fleet efficiency. DEQ was recently able to swap out four older hybrid vehicles from about 2008 for four new plug-in hybrids, which average over 60 miles per gallon, which is an increase of about 15 miles per gallon per vehicle. These updates help DEQ model leadership for the transition to electric vehicles and reduce agency, and overall state fleet, emissions from transportation.

2. Laboratory

2.1. Oregon Water Quality Index Report and map released

The laboratory recently released the 2019 Oregon Water Quality Index Report. DEQ uses this index to describe the general water quality throughout Oregon based on eight parameters collected from a network of 160 monitoring locations statewide. The index is also the basis for DEQ's Key Performance Measure #9, provided to the Oregon Legislature. The measure's three sub-measures pertain to the number of sites in excellent or good status, the percentage of sites with an improving trend in water quality, and the percentage of sites with a declining trend in water quality. In addition to the report, DEQ created an interactive webmap that allows anyone to access the data in a more visually-oriented way, allowing for broader use and understanding of the data.

In 2019, 51 percent of sites had a status of excellent or good water quality, 16 percent had a status of fair, and 33 percent had a status of poor or very poor. Forest and mixed land use types continued to have the highest percentage of sites in excellent or good status, while urban and agricultural land use types had the highest percentage of sites in poor or very poor status.

The 2019 data shows a drop in the number of sites showing improving trends and a rise in sites showing declining trends. The percentage of both was 16 percent. For water year 2018, the percentage of sites showing improving trends was 30 percent, while the percentage of sites showing declining trends was nine percent.

Both the temperature and total phosphorous sub-indices showed improving or no significant trends across the state. This is the third consecutive year that has happened for temperature and second consecutive year for total phosphorous. The total solids sub-index showed the highest percentage of declining trends in water year 2019.

- **Report:** <https://www.oregon.gov/deq/wq/Pages/WQI.aspx>
- **Webmap:** <https://hdcgcx2.deq.state.or.us/Html5Viewer211/?viewer=OWQI>

2.2. New Analytical Work

The inorganic laboratory is currently developing two new analytical methodologies that will assist water quality standards, assessment and permitting. Inorganic arsenic is the toxic form of arsenic and is the form that is defined in Oregon's water quality standards. The new method allows the laboratory to significantly improve analytical processing of samples. The second method is bioavailable aluminum. The bioavailable form of aluminum is considered the toxic form. The water quality standard section is evaluating ways to apply this to the new water quality

criteria for aluminum. This method requires significant analytical development work as it is not yet an accepted standard method.

2.3. Improvements to Air Quality Index website and online tools

An update to DEQ's Air Quality Index went live in June. While visually the page is similar, these improvements allow staff more control and increased efficiency behind the scenes. The AQI update includes more access to administrative tools that will allow DEQ to customize reports and webpage layout and display. The revisions also make the system more interactive, which allows for more options when the public accesses the site. A critical update is that the page is now ADA compliant, allowing equitable access for more users. The AQI is a very important communication tool for DEQ especially during wildfire season, and the updates will allow better and easier use of the system for staff and the public.

3. Air Quality Division

3.1. Diesel Emissions Mitigation Grant Program

DEQ staff and interested parties are working together to develop requirements for the new Diesel Emissions Mitigation Grant Program, funded by Volkswagen Settlement dollars. The program will improve air quality in Oregon by providing approximately \$40 million in funding to replace older diesel vehicles and equipment and install exhaust control retrofit devices. DEQ's top priorities for launching the first round of funding in 2021 include implementing legislative direction from House Bill 2007, allocating funding to effective projects quickly, reducing barriers to participation among minority-owned, women-owned, and service-disabled veteran-owned business owners and emerging small businesses, and reducing diesel emissions in areas of the state that need it most. DEQ expects to provide approximately five consecutive years of grant funding at \$8 million per year for public and private owners of diesel equipment to upgrade their fleets and reduce harmful diesel emissions.

3.2. School bus replacements

Oregon DEQ continues to reduce diesel emissions by replacing and retrofitting school buses with Volkswagen Settlement funds. To date we have obligated and spent \$4.9 million to address 134 buses, removing approximately 21.6 tons of harmful nitrogen oxides and 1.8 tons of carcinogenic particulate matter every year. The program is intended to reduce emissions for at least 450 school buses over the next 2.5 years, and we are 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 September 30, 2020. In recognition of the current economic conditions 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 October 1, 2020 will be allocated to qualified applicants on a first come first serve basis.

3.3. Smoke management

In response to COVID-19, DEQ and our partnering state agencies issued a voluntary request for stopping all outdoor burning. More generally, DEQ is working with five communities across Oregon to develop community wildfire smoke response plans, as an element of the state's Smoke Management Plan. Those five communities include City of Ashland, City of Oakridge, Baker County, Lake County and Wallowa County. Annual updates to the [Oregon Wildfire Response Protocol for Severe Smoke Episodes](#) have been finalized and DEQ completed a pre-season wildfire smoke call on Tuesday, June 16, 2020. DEQ completed and is releasing an updated wildfire trends report: "[Wildfire Smoke Trends and Associated Health Risk](#)". This report now features air quality data for 24 Oregon cities.

3.4. Diesel

In June, California passed its Advanced Clean Trucks rule, which includes new, more stringent emissions standards for Medium- and Heavy-Duty trucks and a Zero Emission Vehicle program that mandates manufacturers make available for sale medium- and heavy-duty zero emission vehicles (trucks) and sets sales targets for manufacturers. Governor Kate Brown also has signed a memorandum of understanding with a number of states that emphasizes Oregon's support for the Affordable Clean Trucks rule, and her intent that EQC follow the California rules here in Oregon.

3.5. Oregon Clean Vehicle Rebate Program

To date, the OCVRP has received over 7800 rebate applications. As of June 17, 2020, the OCVRP has awarded \$15.3 million to over 6200 standard rebates and over 260 Charge Ahead rebates. Of those awarded, 1193 Standard rebates have been awarded to approved, 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 60 dealerships across the state. DEQ is continuing to work with the Center for Sustainable Energy to complete an online platform for applications for rebates. COVID has interfered with some aspects of rebate processing, and DEQ is devoting additional resources to working with CSE to reduce the backlog of pending rebate applications.

3.6. Cleaner Air Oregon

DEQ has initiated a rulemaking to harmonize Cleaner Air Oregon, Division 245, and the Air Toxics Program, Division 246. This rulemaking will also update CAO to improve implementation of the program. The timing of this rulemaking is driven by a need to clarify the

relationship between Air Benchmark Concentrations established in Division 246 and the standards established in CAO in Division 245, in time to carry out the first triennial review and update to the air toxics health risk values in late 2021. DEQ plans to provide its two-year update on the CAO program to the commission in November 2020.

4. Land Quality Division

4.1. Materials Management workforce development grants

The Materials Management Program is prepared to announce the recipients of the 2020 Workforce Development Grants round. These recipients will each receive up to \$10,000 in grant funds from DEQ for the purpose of retaining and expanding the workforce of people across Oregon engaged in reuse and repair of products. This is the second time DEQ has offered these grants, with the first round in 2017, and this allocation of approximately \$120,000 will fund projects all across the state. Workforce development was identified as a key factor in growing the reuse and repair sectors in Oregon, which contributes to the reduction of new items being generated through the continued use and reuse of products. These efforts are part of the overall *2050 Vision and Framework for Materials Management in Oregon*, and will be part of a general program update to the commission later this year. The grant award announcement is scheduled for July 17, with awards expected to fund projects in communities across the state.

5. Water Quality Division

5.1. Program Collaborations between the Department of Environmental Quality and Department of Forestry

The Department of Forestry has been conducting a review of streamside protections on small and medium fish-bearing streams in the Siskiyou region focusing on stream temperature, shade, and riparian desired future conditions, starting with a literature review. In addition, ODF and DEQ have been working to define the relationship between Total Maximum Daily Loads and Oregon's forest practices rules more generally. This includes arriving at a common understanding of how the DEQ and ODF's water quality information and analyses will be used in in both agencies' respective water quality programs.

With support from a facilitator, ODF and DEQ have embarked on an interagency collaboration with the objective of aligning water quality efforts and processes to meet water quality goals. As part of this effort, the agencies have agreed to develop mutually acceptable processes between DEQ and ODF to:

- a) Come to a common understanding of ODF and DEQ policy and legal frameworks and how they advance the mission and vision;

- b) Assess the adequacy of Forest Practices Act rules and other measures in particular basins or subbasins where water quality standards are not met, and where a Total Maximum Daily Load has been issued or is being developed; and
- c) Develop or update load allocations for forestlands and identify conditions necessary to achieve water quality standards, along with similar allocations to other designated management agencies, for those basins or subbasins.
- d) Capture the work completed in the previous bullets in a signed interagency Memorandum of Understanding.

DEQ and ODF formed a group of technical specialists to refine the analysis conducted for the Siskiyou streamside protections review, review load allocations for private forestlands, and develop a framework for using TMDL information to inform future ODF sufficiency reviews of Forest Practices Act rules.

In February 2020, a governor-convened group of environmental and forest industry stakeholders signed a Memorandum of Understanding to collaborate on potential changes to Oregon forest policy on private lands. Part of this MOU, and resulting legislation, which passed in the June special legislative session, directed the Board of Forestry to create rules extending the Salmon, Steelhead, and Bull Trout riparian protection rules to the Siskiyou geo-region. For our collaboration efforts, this decision shifts the work from planning for a July 2020 Board of Forestry meeting on Forest Practices Act sufficiency to working on a bigger picture of forest practices and connection to TMDLs and the development of a forest practices program that provides a safe harbor under the federal Endangered Species Act. DEQ's intent is to move toward a program that meets both federal ESA and federal Clean Water Act requirements.

5.2. Waldo and Crater Lake Outstanding Resource Water designations update

In July 2019, the commission directed DEQ to conduct rulemaking to designate Waldo and Crater Lakes as Outstanding Resource Waters and to establish policies to protect the existing water quality of these lakes. This direction was in response to a rulemaking petition submitted by the Northwest Environmental Defense Center in April 2019 regarding Waldo Lake, and a recommendation from DEQ to include Crater Lake.

Outstanding resource waters are unique high-quality waters that may also have extraordinary ecological and/or recreational values. Oregon's anti-degradation policy (OAR 340-041-0004) and federal regulations under the Clean Water Act both include an outstanding resource water policy that states that where high quality waters constitute an outstanding state resource, the existing water quality and exceptional values of the waterbody shall be maintained and protected. The proposed rules implement the state's outstanding resource water policy.

DEQ developed draft rule amendments and support documents and held two advisory committee meetings in May and June 2020. Staff plan to publish draft rules for public comment on July 15, 2020, and to hold a public hearing on Aug. 18, 2020. DEQ will respond to public comment and plans to bring proposed rules to the commission at its November 2020 meeting.

The proposed rules for Waldo Lake were submitted in the rulemaking petition. The initial proposed rule language may be revised in response to public comment. DEQ proposed slightly different rule language for Crater Lake based on discussions internally and with stakeholders. These rules would prohibit new or increased permitted discharges, with the exception of limited duration construction stormwater permits, which may be needed for the maintenance or improvement of recreation facilities and roads that provide access to the lakes. In addition, the rules would prohibit new or increased activities that would degrade the existing water quality or ecological values of the lakes. The U.S. Forest Service and the National Park Service manage activities on the lakes and in the watersheds. Their management goals to protect the lakes and provide for access and enjoyment by the public are consistent with the Outstanding Resource Waters designation, and these activities are acknowledged within the proposed rules. These agencies would be responsible for managing activities in the proximity of the lakes to meet the Outstanding Resource Waters policy, if adopted by the commission later this year.

6. Eastern Region

6.1 AmeriTies wood treatment plant: New emissions control device (The Dalles)

AmeriTies notified DEQ that it plans to install an emissions control device called a thermal oxidizer that is designed to reduce some air pollutants and odors released from its retort doors. The retort is the piece of equipment that pressure treats the wood.

DEQ expects there to be a reduction in emissions and odors coming from this facility once the emissions control device is installed, potentially this fall. There are other sources of emissions at this facility, such as the stacks of railroad ties stored on site. DEQ continues to work with AmeriTies to assess those sources of emissions and determine if any additional actions may be required under the state's new Cleaner Air Oregon program. DEQ hosted a virtual community meeting via Zoom on June 23 to discuss the new equipment and provide an update on the Cleaner Air Oregon air toxics assessment. Thirty-four people attended the informative meeting, including the mayor of The Dalles and a Wasco County Commissioner.

6.2. Umatilla River: Marathon pipeline exposure response (Umatilla Indian Reservation, near Pendleton)

DEQ continues working with federal, tribal, state and local government partners to reduce the threat of a potential fuel release from a pipeline that was uncovered in the Umatilla River near Pendleton during February 2020 flooding. The primary threat is the potential for river debris to strike the exposed pipe and damage it, causing a release of fuel into the river. Marathon Pipe Line LLC operates the pipeline and is coordinating with the government agencies to protect the pipeline from potential damage.

No release has occurred from the pipeline. Marathon has stabilized the pipeline with a support structure, visually inspects it twice weekly, and continuously monitors its pressure and flow rate. An inspection by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration in May determined the temporary measures Marathon Pipe Line has taken to ensure the pipeline's integrity are sufficient until a permanent replacement is completed in the near future. That replacement would be a new pipeline 46 feet below the riverbed which would make it less vulnerable to damage or leaks in the future.

The pipeline alternately carries gasoline, diesel and jet fuel from Salt Lake City, Utah, through Idaho and Oregon to Spokane, Washington. The exposed section of the pipeline crosses the Umatilla River near the town of Cayuse on the Umatilla Indian Reservation, about 10 miles upstream of Pendleton. Coordinating organizations include the Oregon Department of Environmental Quality, U.S. Environmental Protection Agency, Confederated Tribes of the Umatilla Indian Reservation, U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Oregon Department of Energy, Oregon Department of State Lands, U.S. Army Corps of Engineers, and Marathon Pipe Line LLC.

6.3. Easterday Farms Dairy: Draft CAFO permit (Boardman)

The Oregon Department of Agriculture and DEQ are reviewing an application for a Confined Animal Feeding Operation permit from Easterday Farms Dairy. Located near Boardman, the site was previously operated by Lost Valley Farm, whose owner was repeatedly fined by ODA for permit violations until ODA shut down the operation and the owner filed for bankruptcy. Easterday Farms Dairy has since purchased the property, cleaned up the site and applied to operate a large CAFO operation that includes a dairy and feedlot. ODA and DEQ are developing an extensive outreach plan to engage residents, environmental justice communities, elected officials, tribal governments, environmental, agricultural, and business groups, and others in the review of the application and any draft permit.

6.4. Ash Grove Cement: Air quality permit renewal (Durkee)

On July 2, 2020, DEQ issued a draft Title V air quality permit renewal for the Ash Grove Cement facility in Durkee. The draft permit brings together into one document all permit amendments and rule changes that have taken place since 2010, and is responsive to a federal consent decree from 2013 requiring nitrogen oxide emissions reductions at all Ash Grove Cement facilities in nine states, including Oregon. The renewal will incorporate into one comprehensive permit document the NOx reductions, mercury reductions and opacity standard improvements made at the Durkee facility since 2010. The draft permit is currently out for public comment.

6.5. Leadership change: Regional Administrator Linda Hayes-Gorman retired

Eastern Region Administrator Linda Hayes-Gorman retired on July 1 after 30 years of service at DEQ. DEQ Implementation Administrator Lauri Aunan is serving as Interim Eastern Region Administrator until at least September 30.

Recruitment to fill the position began in early April, shortly after the Covid-19 pandemic began in Oregon. Many recruitments across the agency are currently suspended in response to the economic downturn, and the recruitment for this position will be evaluated this fall. To support this transition and make it possible for Lauri to retain some of her Implementation Administrator duties, Linda has agreed to remain on in a part-time, non-supervisory position until September 30. Linda will provide policy advice, coordinate COVID re-integration planning for the four Eastern Region offices, and serve as a non-supervisory member of the Eastern Region management team.

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 the air quality permit, officially known as a Standard Air Contaminant Discharge Permit, for Cascade Kelly Holdings, LLC, doing business as Columbia Pacific Bio-Refinery, transloading facility. The Columbia Pacific Bio-Refinery is located at 81200 Kallunki Road in Clatskanie.

DEQ received 2,427 written comments and 10 oral comments from individuals supporting or opposing the proposed permit at the public hearing. The permit, review report, and a response to comments can be found on the project's DEQ website <http://ordeq.org/cpbr>. The response to comments document summarizes and responds to all comments received during the public notice period and lists all changes that DEQ made to the permit and review report in response to the comments.

7.2. NW Metals scrapyards fire (Portland)

DEQ continues follow-up work on the NW Metals facility in Northeast Portland. Multiple programs are involved. Following DEQ enforcement action in state court, 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. This action was taken after civil enforcement (fines) were insufficient to bring operational changes needed to protect public health and the environment.

The judge ordered NW Metals to obtain an air quality permit from DEQ before being allowed to operate the shredder on site. DEQ has encouraged community members to contact the complaint hotline if they have seen the shredder in operation. To date, NW Metals also 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 review under the Cleaner Air Oregon program to evaluate air toxics emissions from the facility. As soon as the internal evaluation is completed, DEQ will be conducting public engagement to share information, answer questions and solicit public comment. The court order prohibiting operation of the shredder at NW Metals remains in effect.

On June 23, 2020, DEQ received notification from the Department of Motor Vehicles that the judge in a separate case upheld the DMV's allegations, approving a \$5,000 penalty and three-year suspension of the dismantler certificate and the owner's right to obtain a new dismantler certificate. The order is effective immediately and NW Metals has appealed that decision.

7.3. Portland Gas Manufacturing site cleanup (Portland)

Starting July 10, 2020, NW Natural began work to clean up contaminated sediment at the former Portland Gas Manufacturing site along the Willamette River in downtown Portland. This work will address historical contamination resulting from gas manufacturing operations along the west bank of the river from the mid-1800s to early 1900s.

Cleanup activities include removal of contaminated sediment, capping with clean sand and gravel, and enhanced natural recovery. Activated carbon will be added to a portion of the cap to increase effectiveness. Work is being completed using barges and small boats in an area between the Steel and Burnside Bridges, offshore of Tom McCall Waterfront Park. DEQ is

communicating with tribal governments, legislators, EPA, state and local agency partners, community groups and businesses and residents near the work area.

7.4. Willamette Cove upland site (Portland)

DEQ is seeking public input on the proposed cleanup plan for the upland portion of Willamette Cove. The cleanup plan includes a combination of soil removal for offsite disposal, onsite consolidation and capping. Cleanup of the riverbank and river sediment at Willamette Cove will occur as part of the larger Portland Harbor Superfund cleanup managed by EPA. The site was used extensively for industrial activity from the early 1900s to 1970s. These industrial activities resulted in soil contamination containing dioxins/furans, metals, petroleum hydrocarbons, and polychlorinated biphenyls (PCBs). As early as 1988, DEQ has worked with Metro (the current property owner) and the Port of Portland (the former operator) to conduct multiple investigations, assessments and removal actions at the property.

Under DEQ's cleanup plan, all soil above human health hot spot levels will be removed and disposed at an offsite landfill. Soil remaining above human health risk will be consolidated and contained under a cap, engineered for long-term stability. Soil above ecological risk levels will be addressed by removal and offsite disposal, onsite consolidation, and capping. During March and April, DEQ is conducting a series of public outreach efforts to obtain feedback on this cleanup plan. DEQ has extended the comment period several months and will close at the end of August 2020. The Oregon Department of State Lands issued a public notice regarding temporary closure of the cove in order to do initial sampling work. This is part of the early remedial work for the Portland Harbor Superfund Cleanup.

8. Western Region

8.1. Pembina/Jordan Cove Energy Project (Coos Bay)

FERC Certificate

On March 19, 2020, FERC issued an order granting authorization under Section 3 and 7 of the Natural Gas Act on the Jordan Cove Energy Project. On behalf of State of Oregon, the Department of Justice requested a rehearing of FERC's decision on April 17. FERC denied the rehearing request on May 22. DOJ filed the State's petition for review of FERC's approval of the Jordan Cove LNG Terminal and Pacific Connector Gas Pipeline in the D.C. Circuit on June 10. Briefing schedules will likely be set by the court sometime after the 60-day period for filing petitions passes on July 20.

401 Water Quality Certificate Waiver Request

On May 6, 2019, DEQ denied with prejudice the 401 Water Certification Jordan Cove Energy project. DEQ met regularly with the applicant to discuss their preparation of a new 401 application from June 2019 through February 2020. Those meetings addressed TMDL thermal mitigation plans, water body crossing surveys pre- and post-construction, geological hazardous and landslides using DOGAMI's model, road surveys, horizontal directional boring information, and Blue Ridge alternative water quality impacts analysis. Jordan Cove first stated that they would reapply in the fall of 2019; then that date was moved to February 2020.

On April 21, Jordan Cove submitted to FERC a petition for declaratory order requesting that FERC determine that DEQ waived the requirement for obtaining a 401 Certification. FERC allowed a 14-day comment on Jordan Cove's petition beginning on May 22, 2020. The Oregon Department of Justice, on behalf of DEQ, responded to the declaratory order on May 27, 2020. The state noted that Jordan Cove never applied for a 401 Certification for the FERC licenses, and that the state acted on Jordan Cove's 401 certification request for the U.S. Army Corp permits within one year.

DEQ is waiting for FERC's decision on the waiver petition. In early June, Jordan Cove terminated its agreement with DEQ to pay the cost of the 401 review.

Other DEQ Permits

Jordan Cove submitted a NPDES permit modification for the wastewater treatment system on the North Spit in early 2020. The permit modification includes proposed waste streams from the LNG facility, safety center, office and workforce housing on the North Spit in Coos Bay. The current permit includes the waste stream from an existing permitted landfill, and is up for renewal in June 2021.

The air quality permit application for the LNG facility is on hold until Jordan Cove submits the land use compatibility statement and pays their annual fees. The air quality application for Pacific Connector's Malin Compressor station is being assessed for the adequacy of the land use compatibility statement.

8.2. Riverbend Landfill (McMinnville)

The Yamhill County Board of Commissioners met on July 9th to reopen the record on the remand by Land Use Board of Appeals of the approved site design and floodplain permits to allow expansion of the Riverbend Landfill. The landfill, operated by Waste Management, abuts farmland and a creek in the McMinnville area and has been a significant source of resident concern and environmental advocacy for many years. The facility operates in that location under

local land use approval, and DEQ staff continue to work with the landfill operators, city and area residents to ensure the operations are protective of human health and the environment.

8.3. Gas station cleanup (Canyonville)

Cleanup and emergency response staff in Western Region continue working with the owner of a gas station in Canyonville to investigate and clean up a 3,000-gallon gasoline spill that occurred Feb. 25, 2020. Gasoline entered groundwater and migrated into Canyon Creek, which flows into the South Umpqua River. The gasoline plume is under several small residences, which resulted in vapor intrusion into the buildings. Vapor mitigation systems were installed on June 3, and subsequent air sampling confirmed that the vapor mitigation systems are working as designed; however, DEQ continues to receive complaints from the occupants of gasoline odors. DEQ is working with the gas station owner, the owner of the residences and the occupants to ensure the air is safe to breathe.

9. Oregon Environmental Protection Act

An updated OEPA summary table is attached to this report as Attachment A. In addition, a detailed report concerning the new federal definition of "Waters of the U.S." (WOTUS) is included, as Attachment B. That report recommends that the EQC consider state rulemaking in response to the federal rollback.

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

*Note: Items updated since the last report to the commission are in bold, with grey shading. Topics with an asterisk (**) are new to this document.*

Air Quality: Clean Air Act

Topic	Brief Description	Next Important Action
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"> • Repealed the Clean Power Plan, which was aimed at lowering emissions from the power sector; • Created a new rule for energy efficiency measures that individual sources will need to install; • Updated the foundational implementing rules for existing source emissions guidelines under Clean Air Act Section 111(d), which were promulgated in 1975. 	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.

Topic	Brief Description	Next Important Action
New Source Review: Project Emissions Accounting	The current New Source Review 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 New Source Review applicability process.	A comment period for the proposed rule ended Oct. 8, 2019.
GHG Vehicle Emission Standards/California's Waiver	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>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>
National Vehicle Fuel Efficiency Standards	<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>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>DEQ is analyzing this final rule.</i></p>

Topic	Brief Description	Next Important Action
Methane Standards for New Oil and Gas Facilities	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.	The comment period will remain open through Nov. 25, 2019. A public hearing took place Oct. 17, 2019.
Mercury and Air Toxics Standards (MATS)	<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>The comment period for the proposed rule was open until April 17, 2019, and 495,808 comments were submitted.</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>

Topic	Brief Description	Next Important Action
Ozone National Ambient Air Quality Standards	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.	The current timeline projects release of a draft ISA public comment in the latter half of 2019, a proposed decision in the spring of 2020 and a final decision in Winter 2020/21.
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	EPA issued guidance in April 2018 reducing limitation on use of hydrofluorocarbons , or HFCs, in what is known as the Significant New Alternatives Policy. EPA’s guidance eliminated all limitations on use of HFCs as alternatives. 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.	DEQ joined multistate coalition to challenge the guidance as an illegally promulgated rule. Note: There is pending litigation associated with this rule. The final rule will go into effect 30 days after publication in the Federal Registrar. <i>DEQ is analyzing this final rule.</i>

Topic	Brief Description	Next Important Action
<p>Wood Stove Emission Standards</p>	<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>	<p>Waiting on EPA decision on proposal.</p>
<p>Heavy-duty Truck “Glider Kit” Rule</p>	<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>	<p>Waiting on EPA decision on proposed rules.</p>

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.*

Topic	Brief Description	Next Important Action
Waters of the United States	<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 will hear a report at the July 2020 meeting.</i></p>

Topic	Brief Description	Next Important Action
<p>401 Certifications Rulemaking</p>	<p>Pursuant to a Presidential Executive Order, EPA proposed substantial revisions to the federal regulations governing state’s issuance of 401 certifications for federally licensed or permitted projects.</p> <p>The proposed revisions would substantially affect states’ ability to issue meaningful certifications that ensure protection of the state’s water quality.</p> <p>On June 1, 2020 EPA released a final rule that would restrict the scope of the state review process to exclude consideration of “[...] air quality or transportation concerns, public access to waters, energy policy, or other multi-media or non-water quality impacts [...]].” The rule would also allow the EPA to set a “reasonable period of time” for a state to review, effectively allowing the agency to decide whether a state has waived its right to make a determination.</p>	<p>A final rule was issued but has not yet been published in the Federal Register. It will be effective 60 days following the passage.</p> <p><i>DEQ is analyzing this final rule.</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 Jan 21, 2020.</p>



State of Oregon
Department of
Environmental
Quality

Oregon Environmental Protection Act

Report to EQC: WOTUS and Water Quality in Oregon

HB 2250 (2019) requires DEQ to regularly assess final changes 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

A new federal rule re-defining Waters of the U.S. (WOTUS) went into effect Monday, June 22, 2020, with serious and potentially damaging implications for ensuring clean, safe and healthy water in Oregon. The new definition of WOTUS affects waters and wetlands covered by the federal Clean Water Act (CWA), and reduces the extent of waterbodies in Oregon and elsewhere protected by federal regulations. Reduced coverage under the CWA will be significantly less protective of the environment and require affirmative action by Oregon to maintain the pre-existing level of protection provided through Oregon's water quality programs. DEQ has determined that existing state law provides foundational authority to ensure continued protection to waters of the state that may no longer be subject to CWA authorities including 401 Certification, federal NPDES permitting, water quality standards, water quality assessments and TMDLs; however, rulemaking is recommended to provide for department processes given the loss of federal authority.

Background

The federal WOTUS definition established under the CWA provides the basis for statutes implemented by states to protect water quality, and is therefore vitally important to the ecological and economic well-being of each state and the entire nation. On April 21, 2020, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) [published](#) the Navigable Waters Protection Rule to re-define WOTUS affecting the extent of waterways and wetlands regulated by the CWA.

The new WOTUS definition follows recent action by this federal Administration to repeal the 2015 WOTUS rule, which was only effective in certain states due to legal challenges. The State of Oregon supported the 2015 WOTUS rule because it was based on sound science and took into account the interconnectedness of groundwater, wetlands, streams and rivers. But the new rule creates artificial regulatory boundaries within our watersheds and waterways, and creates barriers to achieving the objective of protecting the chemical, physical and biological integrity of Oregon's and our nation's waters under the federal Clean Water Act.

Final Action

The rule became effective on June 22, 2020. The new definition creates four categories of regulated waters and includes 12 exemptions. The four categories of WOTUS include:

1. Territorial seas and traditional navigable waters
2. Tributaries
3. Lakes, ponds and impoundments of jurisdictional waters
4. Adjacent wetlands

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

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

Categories 2-4 must connect to a category 1 waterbody. Waters that do **NOT** meet the definitions of categories 1 through 4 are no longer considered a WOTUS. Waterways specifically identified as exempt from the new definition of WOTUS include:

1. Waterbodies that are not included in the four WOTUS categories
2. Groundwater
3. Ephemeral features
4. Diffuse stormwater run-off and directional sheet flow over upland
5. Certain ditches
6. Prior converted cropland
7. Artificially irrigated areas
8. Artificial lakes and ponds
9. Water-filled depressions
10. Stormwater control features
11. Groundwater recharge, water reuse and water recycling structures
12. Waste treatment systems

Key Considerations

It is possible that the rule may be put on hold by a nationwide injunction, localized injunctions, or struck down entirely by a judge in any of the currently pending legal challenges. The federal WOTUS definition has been the subject of litigation for decades, and multiple lawsuits were filed throughout the country in advance of the June 22, 2020, implementation date. Colorado was successful in obtaining an injunction against implementation of the rule, and is currently the only state where it has not taken effect. Oregon joined 16 other states and municipalities in filing suit to challenge the new rule, on the basis that the new WOTUS definition was not adopted consistent with requirements of the Administrative Procedures Act, and lacks clarity and scientific defensibility. However, the judge in the multi-party lawsuit denied the request for a stay of the new WOTUS rule. The coalition is developing the case against the rule and there will be further proceedings later this summer and fall.

Impacts to Oregon

The new rule represents a significant rollback in the scope of waters protected under CWA. Although neither EPA nor the Corps has mapped changes in coverage or scope of CWA waters resulting from the new rule, some waters within Oregon will become non-jurisdictional under the federal CWA, including: some wetlands; vernal pools; ephemeral streams or water features; and closed basin streams and lakes that do not contribute perennial or intermittent flow to a traditional navigable water. The reduced spatial scope of federal CWA programs overseen by EPA and the Corps and administered by states will have implications for various CWA permitting and pollution reduction program efforts that DEQ is responsible for administering, but many of these impacts remain to be determined based on guidance from EPA. It is likely that some of these changes or impacts will require development of additional documentation and evaluation by DEQ to demonstrate continued protection of waters of the state that are no longer considered WOTUS.

Most significantly, waters within Oregon that are no longer WOTUS will not be subject to evaluation under CWA section 404 dredge and fill permits issued by the Corps. DEQ anticipates a reduction in the number of dredge and fill projects required to obtain permits from the Corps, which subsequently would reduce the number of projects triggering a CWA Section 401 Water Quality Certification by Oregon DEQ. The 401 certification provides DEQ the opportunity to ensure that a project will comply with all relevant state water quality standards and other relevant state laws. DEQ will continue to lead water quality implementation protection efforts in partnership with our colleague associated State agencies.

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Even with the federal changes to WOTUS, state laws and rules remain unchanged. For example, under Oregon law, no person may discharge pollutants or wastes to waters of the state in a manner that would result in violations of state water quality standards, regardless of federal authority. DEQ has notified the public that, beginning on June 22, 2020, anyone with a project that could impact water-quality can submit a copy of a project plan to DEQ for review and evaluation of compliance with state water quality standards, regardless of the federal jurisdictional determination. DEQ will evaluate the project to determine whether a water quality review is necessary. DEQ's project review will be similar to the current individual 401 water quality certification review, and will provide applicants with a regulatory determination and assurance of compliance with state water quality standards. DEQ anticipates issuing department orders equivalent in water quality protection and maintaining commensurate coverage to applicants. While DEQ may be in the position to issue department orders, significant costs are associated with this approach, and DEQ is recommending rulemaking to provide processes for state water quality reviews for this category of projects

Most waters excluded by WOTUS are considered waters of the state and designated and protected for beneficial uses under the state law. It is important for Oregon to continue to protect these waters to ensure downstream water quality is also protected. Therefore, DEQ will be evaluating waters exempted by the new WOTUS rule, including wetlands, ephemeral streams, waters in closed basins, and certain waters constructed within stream beds used for water conveyance.

It is important to emphasize that the impacts of this and other environmental rollbacks directed by the current administration will disproportionately affect the Black, Indigenous, and People of Color communities within Oregon, further exacerbating the existing environmental injustices these communities experience. Action must be taken to ensure access to clean water is equitably available for all Oregon residents.

Recommendation for EQC Consideration: Guidance Legislative Rulemaking Litigation Other

DEQ is recommending that the EQC consider rulemaking at the September meeting, which would be based on existing state law, and would be in effect while DEQ pursues formal rulemaking.

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