

Date: May 5, 2020
To: Environmental Quality Commission
From: Richard Whitman, Director
Subject: Item H: Director's Report (Informational)
May 7, 2020, EQC meeting

1. Agency Management

1.1. Response to COVID-19

DEQ is continuing to implement Governor Brown's direction to all state agencies regarding actions to reduce the rate of spread of COVID-19 to mitigate impacts to our health care system and risks to workers, their families and the public. Approximately ninety percent of DEQ employees are teleworking. A number of DEQ employees continue field operations – inspections and monitoring – while observing physical distancing protocols.

The state Department of Administrative Services, DAS, is beginning to develop guidance for state agencies about beginning to restore in-office functions, in conjunction with broader guidance to counties about reopening. Some counties may enter "Phase 1" of reopening as early as May 15. DEQ is working with DAS and other agencies to develop plans that are specific to particular office locations and types of operations. As a general matter, we expect to continue strongly encouraging employees to telework where possible in order to minimize risks to employees and the public.

1.2. 2019-21 Budget Reduction Planning

We are now well into the third month of the coronavirus pandemic, and the impacts on our daily lives and Oregon's economy are continuing to deepen. As a state, and as an agency, we have been successful in flattening the curve of the virus as we follow Governor Brown's "Stay Home, Save Lives" executive order. These actions, however, are taking a significant toll on revenues – primarily personal income taxes and lottery funds – that support state government.

We won't begin to fully understand the fiscal position of state government and DEQ until the quarterly state revenue forecast is released on May 20. That forecast will then inform decision-making by Governor Brown and the Oregon legislature on next steps to balance the state budget.

To help lay out the consequences of decisions around the state budget, the Governor and legislative and budget leaders have asked state agencies to submit plans that show what the effects of various reduction scenarios for the rest of the current biennium (2019-21) would be on agency programs and staffing. The scenarios we have been asked to outline run from five percent to fifteen percent reductions. These scenarios do not, at this point, reflect decisions about what will or will not occur. They are tools for decision-makers to discuss whether to use other sources of funding to reduce the impacts of shortfalls, or not. Those decisions likely will be made in June of this year.

As we work on budget reduction scenarios, our goal is to maintain the positive momentum that DEQ has gained in recent years, including the investments we have made in our staff and managers. We also want to assure that we are considering risks of program reductions to Oregon's public health and environment.

DEQ has already put in place some short-term cost savings measures, and we expect that others will be adopted in the near future. One of those measures is consideration of continuing virtual meetings, including most or all EQC meeting for the rest of this biennium. These measures also will impact hiring, travel, and other discretionary spending. Given the size of the reduction scenarios, however, it is inevitable that we also have to consider the possibility of staffing reductions.

The state has a variety of options to lessen the impact of the anticipated drop in revenue, including using some of its ending fund balance, tapping the state rainy day fund and using funds from the federal CARES Act. However, these measures would require legislative action in a special session.

2. Oregon Environmental Protection Act

On March 31, 2020, NHTSA and EPA released a final rule for new SAFE vehicle standards for model years 2021 to 2026 to replace the more stringent standards approved in 2017. The revised standards reduce the required improvements in vehicle efficiency from a five percent increase per year to 1.5 percent per year, instead of five percent, each year. It will be effective 60 days after its publication in the Federal Register, which occurred on April 30.

On Jan. 23, 2020, EPA and the U.S. Army Corps of Engineers finalized the new definitions of "Waters of the United States." The rule revisions will have a significant effect on implementation of federal Clean Water Act programs and may have implications for state

programmatic activities that seek to maintain adequate protections for water quality resources. Mitigating this, however, is the fact that most water quality regulations in Oregon are tied to state law – defining the scope of Oregon DEQ's water quality programs in relation to "waters of the state," which are broadly defined. The new federal rule was published in the Federal Register April 21, 2020, and will be effective June 22, 2020.

The summary issue-tracking document is included with this report as Attachment A, and includes additional detail on all items DEQ is tracking under this Act.

3. Air Quality Division

3.1. COVID-19 and Air Quality

DEQ has been tracking recent changes in Oregon's air quality that may be related to COVID-19. Initially, air quality trends were mixed following the COVID-19 shut down, but, generally, air quality improved in March and April. Vehicle pollutants such as nitrogen dioxide and carbon monoxide along I-5 in Tualatin have been lower than previous years. This is not surprising since ODOT reported a 30 to 40 percent drop in traffic on I-5 near our DEQ air monitoring station. For particulate, we initially saw an increase in PM2.5 in urban areas likely because people were more often burning wood at home. As the weather warmed, PM2.5 levels have dropped. We have also not seen any smoke incursions into communities since prescribed burning was curtailed in March and April (other than a smoke incursion into Portland due to an industrial fire in Long View). Ozone "season" starts in May, when we begin monitoring for ozone statewide.

It's important to note that some of the fluctuation we're seeing in air quality is because of seasonal and short term changes in weather. Wind speed, direction and temperature all impact air quality. DEQ will continue evaluating air quality trends as the COVID-19 pandemic evolves.

3.2. Residential Wood Heater New Source Performance Standard (NSPS)

EPA announced on Friday that it intends to allow a sell-through period past the compliance deadline of May 15, 2020, because of COVID-19. EPA has submitted a rule package to Office of Management and Budget already. This is a continuation of the effort by a segment of the industry to weaken and delay the standard that was adopted some five years ago.

This action falls under review requirements of HB 2250, and has potential of significant adverse health impacts in Oregon. DEQ will likely recommend rulemaking to the commission to revise Oregon's Heat Smart rule to offset the consequences of the federal roll-back

4. Water Quality Division

4.1. Clean Water Act Section 401 – EPA Rules

EPA is scheduled to release rules regarding state water quality certifications under section 401 of the federal Clean Water Act in the next several weeks. In order for federal agencies to issue permits or licenses for activities that may result in any discharge into waterways, the applicant for the permit or license must receive a certification from the state where the discharge may occur verifying that the activity will comply with state water quality standards and programs implementing those standards. EPA proposed rules last year that have generated significant controversy due to their proposed curtailment of state authority. Among other issues, it is unclear whether EPA is proposing rules that would take effect prospectively, or whether they will assert that the rules apply to past state actions.

5. Northwest Region

5.1. Portland Harbor

As noted in the previous Director's Report, EPA has negotiated administrative orders on consent with numerous parties to complete remedial designs for cleanup work in many of the most contaminated areas within the Portland Harbor Superfund Site. However, several parties were unwilling to enter into such orders and, as a result, EPA now has issued unilateral orders to Schnitzer Steel and Evras Inc. The companies are expected to respond to the orders in the near future.

6. Western Region

6.1. Pembina/Jordan Cove Update

The Federal Energy Regulation Commission, FERC, has issued licenses for both the proposed LNG export terminal and the proposed natural gas pipeline from Malin, Oregon to Coos Bay. Oregon DEQ, along with other state agencies, has submitted a petition for reconsideration to FERC on multiple bases, including that FERC failed to follow its own rules for considering water quality impacts of the project.

Although the federal government has established a process by which all federal agencies are to coordinate the timing of their decisions, the U.S. Army Corps of Engineers has not yet acted on applications from Pembina/Jordan Cove for work in and around waterways and wetlands affected by the project.

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Pembina/Jordan Cove also has requested that FERC issue a declaratory order, declaring that DEQ has waived its water quality certification authority under section 401 of the federal Clean Water Act. DEQ is preparing a response to that request, which will be filed in the next month.

Oregon Environmental Protection Act: Summary Tracker

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.*

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>The new rule has not been published in the Federal Register. It will be effective 60 days after its publication</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 released a final rule withdrawing the “appropriate and necessary” finding on April 16, 2020. It will be effective 60 days after its publication in the Federal Register.</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.	DEQ joined multistate coalition to challenge the guidance as an illegally promulgated rule. Note: There is pending litigation associated with this rule.

Topic	Brief Description	Next Important Action
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 standards have also been challenged, and that challenge has been in abeyance pending EPA’s reconsideration of the standards.</p>	Waiting on EPA decision on proposed rules.
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

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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>DEQ provided comments on the proposed new WOTUS definition April 11, 2019.</p> <p>On January 23rd, the EPA and Army Corps finalized the new definitions of “Waters of the United State.”</p> <p>The new rule was published in the Federal Register on April 21, 2020, and will be effective June 22, 2020.</p>
401 Certifications Rulemaking	<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>Rule proposed on Aug. 8, 2019, a comment period for the proposed rule ended Oct. 21, 2019.</p>

Topic	Brief Description	Next Important Action
Power Plant Effluent Limits	<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>	A comment period on these proposed rules is currently open and will run through Jan 21, 2020.