

Date: Sept. 24, 2021

To: Environmental Quality Commission

From: Richard Whitman, Director

Subject: Item K: Director's Report (Informational)
Sept. 30-Oct. 1, 2021, EQC meeting

1. Laboratory

1.1. High concentrations of cyanotoxin found in algae in parts of the Willamette River

As was covered in many news media outlets, algae in and near the Ross Island lagoon area on the Willamette River contained very high cyanotoxin concentrations earlier this summer, some at orders of magnitude above the recreational advisory level. These concentrations posed a significant danger to wildlife, dogs and other pets that swim or drink this river water, but were not considered dangerous for human recreational contact; however, drinking any water with these toxins can result in severe gastrointestinal upset and does pose a greater risk to very young children who ingest these waters. Algae blooms, both those that contain cyanotoxins and those that do not, are exacerbated by high temperatures and slow-moving waterbodies, which result in an overproduction of nutrients that can lead to the development of toxins where otherwise beneficial algae and bacteria are present. In the case of the toxins found in the Willamette River, DEQ's lab worked with the Oregon Health Authority to provide public health advisories and other information to keep people, and their pets, safe.

1.2. PFAS analysis of public water systems to begin this October

Per- and polyfluoroalkyl substances, or PFAS, are a class of synthetic chemicals used in flame retardants and other common household products which are known as "forever chemicals" because of their extreme environmental persistence and slow rate of breakdown. These chemicals have been used extensively for many applications since the 1940s and are a priority set of chemicals of concern for EPA because of their human health and environmental harms. This October, DEQ's laboratory, in collaboration with the Oregon Health Authority's Drinking Water Program, will begin testing public water systems around the state that (based on previous environmental data) have higher relative risk for PFAS contamination. The laboratory plans to

sample and analyze up to 150 public water systems during this testing cycle through early spring 2022. A map of the sampling locations is included as an attachment to this report.

1.3 Pollutant spikes seen from Labor Day 2020 wildfire analysis

Over the 2020 Labor Day period and beyond, many parts of Oregon suffered catastrophic wildfire damage. DEQ's laboratory has analyzed water quality data collected from some of those areas and found significant pollutant spikes in many of the results, including levels of nitrates, current and legacy use pesticides, metals and turbidity higher than previously recorded in 20 years of data collection.

2. Air Quality Division

2.1. Cleaner Air Oregon rulemaking

DEQ closed the public comment period for DEQ's Cleaner Air Oregon and Air Toxics Alignment rulemaking on August 20. DEQ received approximately 15 unique comments from 160 total commenters. This rulemaking proposal, which DEQ will bring for commission action at the November meeting, is intended to improve alignment between DEQ's Oregon Air Toxics program and the newer Cleaner Air Oregon program and ensure both programs continue to use the best science to update and maintain health-based toxicity reference values. DEQ is also proposing certain updates to the Cleaner Air Oregon operating rules that will address unintended gaps discovered over the course of implementation. The updates to CAO also will streamline, clarify and improve the efficiency and timeliness for completing risk assessments required under the program.

2.2 Regional Haze State Implementation Plan rulemaking updates

DEQ received a request for extension to the Regional Haze State Implementation Plan public comment period to allow interested parties more time to review and comment on the proposed SIP. DEQ has extended the public comment period for the Regional Haze SIP until Nov. 1, 2021, at 4 p.m. The public hearing has also been rescheduled to Oct. 25, 2021, at 5:00 pm. Additional information on the public hearing and how to submit public comment can be found at <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rhsip2028.aspx>. With this change, DEQ is now planning to bring the Regional Haze SIP proposal to the Environmental Quality Commission during the January 2022 commission meeting.

2.3 Oregon Clean Vehicle Rebate Program rulemaking updates

During the 2021 Legislative session, the Oregon Legislature passed House Bill 2165, which included changes to the Oregon Clean Vehicle Rebate Program to better serve rural and low-

income Oregonians. Major changes include an increase of the Charge Ahead rebate from \$2500 to \$5000; allowing entities that provide services to low-income households to receive Charge Ahead rebates; removing the sunset of the program; revising the definition of qualifying household and adjusting administrative expenses that DEQ can spend. These changes take effect January 2022, per the terms of the legislation, and require updated agency rules to be in place before that date to reflect the program changes. DEQ will bring temporary rules to the commission for consideration in November that will allow DEQ to implement these changes by the deadline. DEQ will hold a stakeholder discussion in October to receive feedback from stakeholders on the proposed temporary rule language. DEQ intends to complete a permanent rulemaking in early 2022.

2.4 Diesel Mitigation Program application deadline extended

DEQ extended the deadline for applications to 5 p.m. on Sept. 30, 2021. The one-month extension allows all interested parties and grant applicants additional time to compile information about their diesel equipment and submit complete applications for consideration during the 2021 grant cycle. We have seen significant interest in this first round of grants, and we are excited to complete the next phase of grant application review, scoring and awards.

3. Land Quality Division

3.1. Hazardous Waste Program: 2022 Rulemaking

The Hazardous Waste Program intends to bring proposed rules to the commission in 2022. We anticipate this package will contain two rules: the federal Definition of Solid Waste Rule amendment, and a companion rule reflecting provisions in Senate Bill 57A, which passed during the 2021 Legislative session.

The Definition of Solid Waste Rule is a federally required adoption to maintain DEQ's Hazardous Waste Program as authorized by the Environmental Protection Agency. The rule contains both mandatory and optional portions. The Hazardous Waste Program is evaluating the federal rule and will develop Oregon-specific adoption recommendations with a rule advisory committee prior to EQC consideration.

Senate Bill 57A, now law, modernizes and streamlines Oregon Revised Statute 465.376. The statute governs hazardous waste disposal fees, also called "tipping" fees, for wastes disposed of in Oregon's only commercially permitted Subtitle C hazardous waste landfill. The rule needs updating to reflect the statutory changes, including eliminating obsolete fees, consolidating fee

categories and allowing the flexibility of setting these fees in rule rather than in statute. This rulemaking will establish these fees in Oregon Administrative Rule Chapter 340.

3.2. Materials Management Program: DEQ to Launch “I’m a Bad Apple” Campaign in October

Starting this fall, DEQ’s Materials Management Program will launch a statewide, public awareness campaign that uses humor and cost-savings messaging to motivate Oregon households to reduce food waste at home. The new campaign, known as “I’m a Bad Apple,” is the result of extensive qualitative and quantitative research which found that saving money is the primary driver for people to reduce food waste. The campaign uses a playful design to capture peoples’ attention and provides simple, proven steps to reduce food spoilage at home. The campaign also focuses on Oregonians’ favorite foods – especially milk, fruits and vegetables – that are most readily prone to spoil, with tips on how to keep them fresh longer.

This campaign includes outreach materials that are designed for both DEQ and partner agencies to use (such as local governments, nonprofits, retailers, etc.). DEQ will begin promoting the campaign in October using a mix of earned media, paid TV advertisements, and social media. This project is central to DEQ’s strategic plan to reduce wasted food, and takes DEQ closer to achieving the directives in Governor Brown’s Executive Order 20-04 to reduce food waste by 50 percent by 2030.

3.3. Materials Management Program: Built Environmental Strategic Plan

The built environment was identified as a priority lifecycle program in the 2020 Framework for Action because of its significant impact on emissions and people’s daily lives. Buildings account for 30 percent of Oregon’s consumption-based greenhouse gas emissions – eight percent due to construction materials themselves. Nearly one-third of Oregon’s waste stream is made up of construction and demolition waste. The built environment also affects human health through exposure to toxics in materials, proximity to polluters, indoor environmental quality, and vulnerability during natural disasters. In addition, the built environment plays a role in the structural inequities that exacerbate the impacts of the climate and health crises, as well as economic opportunities for BIPOC, low-income, rural, and other frontline communities.

While the Materials Management Program has a long history working in the built environment, no strategy for this work had been formalized. In July and August 2021, DEQ convened a steering committee to scope and provide recommendations for the Built Environment Strategic Plan.

The strategic planning effort was based on an emergent approach, rooted in equity, racial justice, life-cycle thinking and centering well-being. The steering committee included cross-program DEQ staff, as well as a stakeholders outside of DEQ with various built environment expertise including building codes, design, sustainability, green chemistry, material impacts, community engagement, education, equity, and racial justice. The strategic plan is currently being drafted based on the recommendations of the committee. Next steps in the process will include:

- Submit draft to steering committee for review and comment
- Finalize and publish strategic plan
- Identify and scope specific projects

The Materials Management program looks forward to briefing the commission when we've completed the items listed above.

4. Eastern Region

4.1. PGE air quality permit modification: Public notice and hearing (Morrow County)

DEQ is hosting a virtual public hearing at 6:00 p.m. on Wednesday, October 13 to accept comments on DEQ's proposed modification to an existing air quality permit for the PGE electricity generation facility near Boardman.

The permit is called a Prevention of Significant Deterioration Air Contaminant Discharge Permit. The permit modification is needed for two reasons: because PGE's coal-fired power plant closed in October 2020 and because the manufacturer of the adjacent PGE Carty plant's natural gas turbine released new information that startup and shutdown emissions for two pollutants, carbon monoxide and volatile organic compounds, are higher than originally estimated. PGE starts up and shuts down the turbine to meet the electricity needs of the communities it serves. Electricity needs fluctuate due to electricity use and contributions from other power sources.

The proposed permit modification does not change how much natural gas PGE Carty uses or change the hours the plant can run. The modification proposes to remove emissions allotted for operation of the coal boiler and incorporate the new manufacturer information for natural gas turbine start-up emissions. This will result in a reduction in most emissions limits and increase in the limit for volatile organic compounds. Analysis shows the proposed modification will not significantly impact air quality in the surrounding area.

4.2. Union Pacific Railroad train derailment spill settlement (Mosier)

DEQ and EPA both finalized settlements in August and September with Union Pacific Railroad for the oil spill caused by a 2016 train derailment near Mosier. Under the settlements, UPRR will pay a \$52,500 civil penalty to the U.S. Treasury for discharging crude oil to the Mosier wastewater treatment plant, and a \$30,000 civil penalty to the State of Oregon for discharging approximately 10 gallons of oil to the Columbia River.

In addition to paying these penalties, UPRR has also reimbursed cleanup costs for Oregon DEQ, the Washington Department of Ecology and EPA. Cleanup projects completed by UPRR included excavation of 2,960 tons of contaminated soil, a comprehensive cleanup of the city's wastewater treatment plant, treatment of contaminated groundwater, and reclaiming, regrading and replanting the spill site.

4.3. Hells Canyon Complex Litigation Settlement (Wallowa County)

DEQ and the Oregon Department of Fish and Wildlife signed a settlement agreement in mid-August with the Nez Perce Tribe, Idaho Rivers United and Pacific Rivers. The agreement settles a lawsuit filed by the Tribe and organizations against DEQ regarding the Clean Water Act Section 401 Certification that DEQ issued in 2019 for the Hells Canyon Complex Hydroelectric Project on the Snake River, owned and operated by Idaho Power Company.

The primary outcome of the settlement is DEQ's commitment to develop a pollution control plan, called a Total Maximum Daily Load or TMDL, for methylmercury in the Snake River. The goal of the TMDL is to reduce levels of mercury in fish in the Snake River. DEQ has entered into a separate agreement with Idaho Power Company, which will provide \$750,000 toward development of this TMDL. Governor Brown directed DEQ to use \$750,000 from our budget toward this TMDL development. Additional settlement commitments include coordination with the Tribe on fish placement above Hells Canyon Dam in Oregon and finalizing a framework for reintroduction of sockeye salmon into Wallowa Lake, both led by ODFW, and increased collaboration and communication between DEQ, ODFW and the Nez Perce Tribe.

4.4. Middle Fork Irrigation District – 401 denial (Hood River County)

The Middle Fork Irrigation District (MFID) delivers water for irrigation and other agricultural uses to 6,358 acres of high-value fruit orchards and other crops in the upper Hood River Valley. MFID maintains and operates Clear Branch Dam in the Mt. Hood National Forest. The dam, which creates Laurance Lake, is being evaluated for stability and assessed for future dam remediation work.

In September 2020, MFID applied for a Section 401 Water Quality Certification for operation and maintenance of the irrigation infrastructure, which is authorized under a special use permit issued by the U.S. Forest Service. The special use permit covers the Clear Branch Dam, Laurance Lake Reservoir, a sediment basin, and water conduits and water diversions. Section 401 of the Clean Water Act requires that federally permitted construction or other activities in waterways protect water quality for people, fish and aquatic life.

DEQ evaluated the application and determined the project as proposed will not adequately meet upstream/downstream water temperature criteria. Consequently, DEQ denied without prejudice the certification application. "Without prejudice" means the irrigation district can submit a new application. DEQ understands there may be future proposed work at this location to improve dam safety. DEQ will continue working with the irrigation district and other project partners to find solutions that reduce water quality impacts of the dam and meet Section 401 requirements of the Clean Water Act.

5. Northwest Region

5.1. Bradford Island added to Superfund National Priorities List (Multnomah County)

On Sept. 8, 2021, the U.S. Environmental Protection Agency announced it would propose adding Bradford Island to the National Priorities List, which would make it a Superfund site. The listing comes after the Oregon Department of Environmental Quality, Washington Department of Ecology and the Yakama Nation wrote joint messages in 2019 and 2021 to EPA seeking to have the site placed on the National Priorities List.

DEQ, Yakama Nation, Washington Department of Ecology, and others have been working for years with the Army Corps of Engineers to clean up the site, but the Corps has not made adequate progress in a timely manner. Listing Bradford Island as an EPA Superfund site will help provide consistent federal funding and other requirements that are expected to re-energize cleanup of the site.

5.2 NEXT Renewables (Clatskanie)

NEXT Renewable Fuels Inc. is a proposed new 100-acre biofuels facility slated to be built adjacent to Columbia Pacific Bio Refinery along the Columbia River at the Port of Columbia County's Port Westward site. NEXT has submitted an air quality permit and Cleaner Air Oregon emissions inventory and are working closely with water quality staff to submit their construction and industrial stormwater permits. In addition, the proposed project will require a 401 Water Quality Certification. On Sept. 7, 2021, DEQ hosted a virtual community engagement meeting to

provide information, answer questions and hear concerns. DEQ anticipates ongoing community engagement.

5.3 NW Metals (Portland)

The Multnomah County Circuit Court entered DEQ and NW Metals' Stipulated Permanent Injunction on June 21, 2021, which requires NW Metals to comply with all air, water and solid waste laws and gives DEQ the power to enter and inspect the NW Metals facility at any reasonable time. Any violation of the terms of the Injunction may be punishable by a contempt of court order, penalty and/or jail time.

On Aug. 12, 2021, the court entered the parties' stipulated money award for DEQ's recovery of the outstanding Remedial Action Order costs incurred in responding to the March 2018 fire at NW Metals' previous facility on NE Killingsworth Street. NW Metals has agreed to pay \$109,184 over four years.

5.4. Owens-Brockway (Portland)

Owens-Brockway Glass Plant #21 produces a variety of glass bottles and jars recycled from post-consumer glass and raw materials. This plant has been operating in Portland since 1956.

Air Quality Permit

On May 10, 2021, EPA issued an order requiring DEQ to revise Owens-Brockway's Title V air quality permit and/or the permit record in 90 days. Specifically, the order requires DEQ to re-examine how the permit ensures compliance with particulate matter emission limits. DEQ also received a memorandum from EarthJustice on April 24, 2021, that summarized emissions modelling of the facility and raised concerns about Owens-Brockway exceeding the National Ambient Air Quality Standards, or NAAQS, for one-hour sulfur dioxide, one-hour nitrogen dioxide and 24-hour PM2.5.

On June 25, 2021, DEQ sent a letter to Owens-Brockway informing the facility of DEQ's intent to reopen its permit in response to EPA's order and to assure compliance with Plant Site Emission Limits, or PSELS, and NAAQS. In its letter, DEQ requested that the facility provide information that could inform DEQ's permit reopening.

Owens-Brockway submitted a permit modification application on July 28, 2021 to remove Furnace A, one of its two remaining glass-making furnaces, from its air quality permit. This permit change would eliminate Owens-Brockway's authorization to operate Furnace A, and signalled the company's intention to keep the furnace permanently shut down. The facility has

also requested an opportunity to perform its own NAAQS modelling analysis, and submitted a modelling protocol to DEQ on Sept. 20, 2021. The modelling protocol is currently under review.

On Aug. 9, 2021, the company executed a Regional Haze Stipulated Agreement and Final Order with DEQ, as outlined below.

DEQ has asked EPA for an extension of the 90-day deadline to evaluate and incorporate new information into a revised permit and to see if the parties can arrive at a more comprehensive solution. DEQ expects to issue a revised permit this fall that will respond to EPA's order, incorporate the Regional Haze agreement and any final enforcement orders, and impose conditions necessary to assure compliance with NAAQS and PSELS.

Cleaner Air Oregon

DEQ met with representatives of Owens-Brockway in July 2021 to address completion of the CAO risk assessment. Owens-Brockway subsequently requested, and DEQ granted, an extension for completing the risk assessment in order to modify previous submittals to DEQ. Modifications include completing a Level 4 risk assessment, which is the most technically complex evaluation under CAO and includes site-specific considerations that improve the accuracy of results. On Aug. 19, 2021, Owens-Brockway submitted an updated emissions inventory to reflect the permanent shut down of Furnace A. Owens-Brockway submitted the revised risk assessment and related documents to DEQ on Sept. 20, 2021, which are currently under review.

DEQ will be meeting with community groups and their representatives in September to discuss technical and regulatory updates.

Regional Haze

On July 23, 2021, the commission adopted new and revised rules for Regional Haze emissions control analysis for stationary sources (OAR 340-223). These rules detail a process that large stationary sources of air pollution in Oregon are required to go through in order to determine what reasonable controls are required to improve visibility at Class I areas in Oregon and neighboring states. The rules applied to all sources with Title V air quality permits.

The rules allow the facility to choose one of four compliance pathways:

1. Evaluate emission controls for effectiveness at reducing regional haze emissions and install controls deemed cost effective by DEQ;
2. Reduce permitted emissions below a specific threshold identified in the rule;

3. Work with DEQ to identify and install alternative control options that would reduce regional haze pollutants; or
4. Replace emission units with lower-emitting equipment.

On Aug. 9, 2021, DEQ entered a Stipulated Agreement and Final Order with Owens-Brockway to obtain compliance with Regional Haze regulations. Through the order, Owens-Brockway agreed to no longer operate Furnace A, to reduce NO_x, SO₂ and PM emissions from Furnace D by January 2022, and to make further reductions by July 2025. Owens-Brockway is working to identify potential methods to reduce emissions from Furnace D, its only remaining glass furnace. The facility also agreed not to use, restart or rebuild Furnace B and Furnace C without first going through future emissions control analysis.

DEQ incorporated this agreement into its proposed State Implementation Plan for Round II of Regional Haze, which is currently out on public comment until Nov. 1, 2021.

Enforcement

On June 3, 2021, DEQ issued a \$1 million civil penalty and order to Owens-Brockway for air quality violations, including ongoing exceedances of the total particulate matter and opacity limits in the permit. With respect to Furnace A, DEQ ordered Owens-Brockway to submit a permit modification application to remove the furnace from the permit, consistent with the company's stated intentions to keep Furnace A shut down indefinitely. As mentioned above, the facility has submitted this document.

With respect to Furnace D, DEQ ordered the facility to come up with an immediate plan to mitigate opacity and particulate matter emissions and to install pollution controls as a permanent solution to address these issues.

Owens-Brockway filed an appeal with DEQ on June 25, 2021, to contest the civil penalty and order. DEQ met with Owens-Brockway on July 28 and Aug. 2, 2021, to discuss the enforcement case, and DEQ visited the site on Sept. 9, 2021.

DEQ continues to engage in settlement discussions with Owens-Brockway and is encouraging the facility to take a comprehensive approach to address the multiple air quality issues identified above.

5.5 Zenith Energy (Portland)

Zenith Energy is an oil and gas terminal and transloading facility in northwest Portland. The facility has held a Title V air quality permit since May 2007, and in January 2021 DEQ requested additional information to process the facility's timely, through administratively-extended, permit renewal request. At that time, DEQ requested Zenith provide an updated Land Use Compatibility Statement from the City of Portland. DEQ set a deadline of May 31, 2021, for Zenith to provide that additional information. Later, on May 13, 2021, in response to a request from Zenith, DEQ extended that deadline until Aug. 31, 2021.

On Aug. 27, 2021, the City of Portland issued a decision denying Zenith's application to the city for a LUCS for this facility. On Sept. 1, 2021, DEQ issued a proposal to deny Zenith's permit application renewal. The denial takes effect in 60 days unless Zenith asks for an administrative hearing.

Water quality

Zenith has applied for stormwater construction permit coverage related to their proposed construction activities for the handling of renewable fuels. Since the proposed project will disturb more than five acres, part of the review process is an opportunity for public comment, based on the application and other DEQ information. The public comment period closed Aug. 27, 2021. DEQ is in the process of reviewing public comment, and will make a permit decision after the conclusion of the review.

6. Western Region

6.1. Jordan Cove Energy Project (Coos Bay)

The Jordan Cove Energy Project had indicated in recent court filings that they have put their project on pause, due to recent FERC decisions. Jordan Cove has not formally notified DEQ of any intent to withdraw currently pending applications, but has verbally indicated intent to withdraw Air Quality permit applications for the North Spit facility and Malin Compressor Station. Water Quality and Solid Waste permits are scheduled to be renewed whether the energy project goes forward or not, as both the NPDES permit and Solid Waste permit are associated with the site of the former Weyco facility. FERC clarified in a recent letter, excerpted below, that they consider the project to remain active, though paused.

"Due to the uncertainty regarding a timeline for the Project and concerns with the Programmatic Agreement, commenters and signatories to the PA have requested that the PA be terminated or significant amendments be made to the PA. Although the project

proponents have chosen to pause the development of the Project, the Commission's March 19, 2020 Order granting Authorizations Under Sections 3 and 7 of the Natural Gas Act (Order) remains valid. Therefore, we have concluded that it would be inappropriate to terminate the PA at this time. We have also concluded that amendments to the PA at this time are premature, given the pause in project development. Should the project proponents choose to resume development of the Project, Commission environmental staff, in consultation with the SHPO and ACHP, and other concerned parties including federally-recognized Indian Tribes would reassess the status of the Programmatic Agreement and would at that time consider amendments to the PA to ensure that its aims and goals are successfully met and that any outstanding requirements are appropriately satisfied."

6.2. J.H. Baxter Plant (Eugene)

DEQ is requiring J.H. Baxter & Co., owner of a wood treatment facility in Eugene, to collect soil samples in nearby residential yards to determine if contaminants from the company's plant have accumulated in the neighborhood. Due to the time needed to obtain access agreements with property owners and sampling sequencing, this event is expected to take place between September and November 2021. DEQ has formed a technical team that includes the Lane Regional Air Protection Agency, the Oregon Health Authority, Oregon State University and the City of Eugene. The technical team will investigate the sources and extent of the contamination and any potential health risks to the community. When the soil sampling analysis is complete, DEQ will share the results with the residents whose yards were sampled. DEQ will inform residents if sampling results indicate the need for soil cleanup. There will also be a public meeting to share the investigation results and any follow-up actions with the general public.