

State of Oregon

Department of Environmental Quality Memorandum

Date: Sept. 14, 2023

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Item B: Director's Report (Informational)
Sept. 14-15, 2023, EQC Meeting

1.0. Director's Office

1.1 DEQ Strategic Plan Update

DEQ is developing a strategic plan led by a steering committee and with help and guidance from our consultant, Engage to Change. Governor Kotek has requested that all state agencies develop a strategic plan by June 2024.

The strategic plan will articulate our agency's mission and be a guide for how to support our staff, prioritize our resources and our work, and move toward making Oregon a better place for all.

With help from Engage to Change, the committee is rooting our strategic plan – and the process to develop it – in antiracism and equity. This is a significant difference from the way this planning work has typically been done at DEQ. Figuring out how to center antiracism in a group used to working in white dominant culture has required the steering committee to do a lot of learning and self-reflection. We will continue to move intentionally throughout the next stages of the strategic plan development.

By rooting this plan and the process in antiracism, we will start with the people most impacted to develop our solutions, understanding that a one-size-fits-all solution will leave historically marginalized communities behind. If DEQ is not serving the most vulnerable among us, then we cannot succeed at meeting our mission.

Right now, the steering committee is mapping out a timeline and next steps for internal engagement, developing our vision, mission and goals, and writing the plan for submission to the commission in April 2024. The steering committee will provide updates to the commission, as needed.

2.0 Climate Protection Program

2.1 Community Climate Investment Entity Update

DEQ, in partnership with the [Community Climate Investment Equity Advisory Committee](#), has selected [Seeding Justice](#) as the Community Climate Investment entity for the [Climate Protection Program](#). The entities must be 501(c)(3) nonprofits and must demonstrate appropriate administrative processes and financial controls to hold and spend funds on approved projects.

The funds are prioritized for greenhouse gas emission reduction projects that benefit Oregon's environmental justice communities, including communities of color, Tribal communities, rural communities, and communities experiencing lower incomes.

Next steps

DEQ and Seeding Justice are now working on a final contract. Following finalization of a contract, Seeding Justice would be an approved Community Climate Investment entity and approved to receive funds from fossil fuel suppliers regulated by the Climate Protection Program.

Selection process

DEQ held a request for applications for Community Climate Investment entities from March 10, 2023, through May 16, 2023. The application selection committee consisted of DEQ Climate Protection Program staff, supported by DEQ Central Services Division staff, and an Equity Advisory Committee member. The selection committee reviewed the application and gathered additional information at a meeting with Seeding Justice. The Equity Advisory Committee members were briefed throughout the process and provided valuable input. The committee fully supported DEQ's recommendation to move forward with Seeding Justice.

Final steps

If the contract is approved, Seeding Justice will have 60 days to submit a workplan to DEQ that describes how they propose to invest the funds. DEQ will review the workplan with Seeding Justice and incorporate feedback from the Equity Advisory Committee. Assuming DEQ approves the workplan, Seeding Justice can invest funds in projects across Oregon. A tentative [timeline](#) is available on the climate program website.

3.0. Air Quality

3.1 EPA Action on National Ambient Air Quality Standard for Ozone

EPA announced that it will undertake a new review of the National Ambient Air Quality Standards, or NAAQS, for ozone in lieu of completing its reconsideration of the Trump Administration's October 2020 decision to retain the existing ozone NAAQS. The existing NAAQS – 70 parts per billion for both the primary and secondary standards – date from 2015. More information will be available after the agency convenes a public science and policy workshop in spring 2024 to gather information from the scientific community and the public.

3.2 Heavy-Duty Vehicle Low NOx Omnibus Standard

In November 2021, the EQC adopted California's Clean Truck Rules: (1) Advanced Clean Trucks rule which required manufacturers to produce and deliver a percentage of zero emission medium- and heavy-duty trucks starting in 2025 and (2) the Heavy-Duty Low NOx Omnibus Rule, which required lower NOx and PM emission standards for conventionally fueled diesel trucks starting in 2024. These rules were adopted by reference under the Clean Air Act authority which allows states to either adopt California's stringent motor vehicle emissions requirements or the federal standard.

Business decisions made by engine manufacturers following Oregon's adoption of Heavy-Duty Low NOx Omnibus standard for conventionally fueled medium- and heavy-duty trucks indicate that a smaller than predicted number of engines that meet the new standard will be available beginning with model year 2024.

In some cases, entire vehicle sectors are predicted to have no compliant product available to meet the new requirements. The rules do include a provision that allows for the sale of "legacy" engines; however, these are capped as a percentage of total volume of engines sold in the state. For that reason, fleet managers and engine manufacturers have expressed concern that the current rules that take effect in 2024 could lead to a very limited number of diesel vehicles being offered for sale in Oregon.

DEQ plans to bring proposed temporary rules to the EQC by the end of 2023 that would align with California's final amendments to their Heavy-Duty Engine and Vehicle Omnibus Regulation. DEQ also plans to bring a proposed permanent rule to the EQC prior to the expiration of the temporary rule in 2024. This action will likely bring more certainty to engine manufacturers and allow for the sale of new trucks in 2024.

4.0 Water Quality

4.1 CZARA/CNPCP Project Update

The Coastal Zone Management Act (CZMA) and Coastal Zone Amendments and Reauthorization Act (CZARA) require coastal states to develop a Coastal NonPoint Control Plan (CNPCP) that shows the state has regulatory and/or effective voluntary programs in place to limit coastal zone nonpoint source pollution from a wide variety of potential sources. A plan must demonstrate that, over time, Clean Water Act (CWA) standards will be met in waterbodies and estuaries in the coastal zone. The Environment Protection Agency and National Oceanic and Atmospheric Administration (NOAA) must review and approve the plan in a public process. Failure to develop an approved plan can result in a state incurring a penalty of 30% of its CZMA Section 306 and CWA Section 319 funding. For the State of Oregon, the Departments of Environmental Quality (DEQ) and Land Conservation and Development (DLCD) are the lead agencies responsible for writing, submitting, and implementing the state's CNPCP, in coordination with other relevant state agencies.

Following a lawsuit settlement which required EPA and NOAA to make a final decision on Oregon's CNPCP, the state's plan was disapproved in 2015 due to inadequacies in our forestry program. In order to restore funding for CZMA Section 306 (DLCD) and CWA Section 319 (DEQ) programs, Oregon needs final approval on the disapproved forestry section and updated interim approved sections (some of which have fully approved subsections).

The state has updated its articulation of relevant enforceable authorities, a key need for administrative coordination and demonstrating that the state has enforceable nonpoint source authorities, in combination with recent water quality Total Daily Maximum Load (TMDL) plans and Memoranda of Understanding with the Departments of Forestry (ODF) and Agriculture (ODA).

The recent DEQ-ODA Memorandum of Understanding for water quality/TMDL implementation, which clarifies DEQ's ability to require implementation plans from ODA, and the adoption of TMDLs by rule, are important for demonstrating the state's ability to protect and restore coastal water quality on agricultural lands.

Forestry has four conditions needing remediation according to the 2015 disapproval:

- Aerial application of herbicides [resolved],
- "Legacy" (pre-Forest Practices Act) roads [likely resolved],

- Landslide-prone areas [may need additional measures], and
- Riparian (small and medium streams) [may need additional measures].

The passage of the Private Forest Accord (PFA) updates to the Forest Practices Act is a substantial contribution to meeting the forestry program deficiencies. It is noteworthy that the PFA is an Endangered Species Act-based approach and does not provide CWA assurances, although it does substantially advance water quality priorities on non-federal forestlands. In addition, the statute sets out a timetable for this work and a repeal occurs if the federal agencies (i.e., US Fish and Wildlife Service and National Marine Fisheries Service) do not issue an Incidental Take Permit and approve the state's Habitat Conservation Plan by the end of 2027. Therefore, state and federal staff are focused on this important work.

4.2 Aquatic Life Toxics Criteria Rulemaking 2024

DEQ is initiating a rulemaking to update Oregon's Aquatic Life Water Quality Criteria for Toxic Pollutants (Table 30 of Oregon Administrative Rule (OAR) 340-041-8033) and corresponding text in OAR 340-041-0033. This project was identified as a high priority project in the 2021 – 2024 Triennial Review Work Plan, which included public input. DEQ is initiating a rulemaking process to adopt new criteria for acrolein, aluminum, carbaryl, and diazinon and update the state's aquatic life criteria for cadmium and tributyltin based on EPA's most recent recommendations. Adding or updating these numeric criteria in Oregon's water quality standards will ensure the protection of Oregon fish and aquatic life. These aquatic life criteria will not be effective until EQC adoption and subsequent EPA approval. After the numeric criteria become effective, they can be used in DEQ's water quality programs, including water quality assessment, wastewater permitting, and TMDL development.

DEQ plans to hold Rulemaking Advisory Committee meetings beginning in September 2023 to receive input on the fiscal and economic implications for entities impacted by the proposed aquatic life criteria updates. In early 2024, DEQ will seek public comment on the proposed changes and hold a public hearing. Once DEQ receives and responds to public comment, DEQ will finalize the proposed criteria and present the rulemaking package to the EQC for adoption in mid-2024. DEQ will regularly update the rulemaking web page ([Aquatic Life Toxics Criteria 2024](#)).

4.3 Three Percent Water Quality Fee Increase Rulemaking

Every year DEQ is authorized to increase water quality permitting fees by the anticipated increase in the cost of administering the permitting program, or three percent, whichever is lower. The anticipated increase in costs for the 2023-25 biennium is 6.11 percent, or 3.05 percent over a one-year period. Therefore, DEQ proposed a 3.00 percent fee increase this year. At the May 19, 2023, EQC meeting, the Commission delegated the fee increase rulemaking to Director Feldon.

DEQ has completed the rulemaking process. The public comment period was open from June 30 through July 21 and a public hearing was held on July 17. DEQ received one comment during the public comment period, and it was in support of the proposed three percent fee increase. Director Feldon approved adoption of the three percent water quality permit fee increase on Aug. 30, 2023. The new fees will become effective on Nov. 1, 2023.

4.4 ODF-DEQ MOU on Collaboration to Achieve Water Quality Goals Implementation Progress Update

The Oregon Department of Forestry and DEQ updated a Memorandum of Understanding on Dec 9, 2021, on achieving water quality goals on non-federal forestlands in Oregon. The MOU included a commitment

to periodically evaluate implementation progress and report to the EQC and the Board of Forestry. DEQ last provided updates to the commission and the board at separate July 2022 EQC and Board of Forestry meetings.

Staff and managers from ODF and DEQ met monthly throughout 2022 and discussed: general agency updates, status and schedule of Total Maximum Daily Load development, water quality rulemakings, Integrated Report and methodology updates, Forest Practice Act rulemaking, legislative efforts, hiring and staffing transitions. Coordination continued on the development of ODF TMDL implementation plans, Coastal Nonpoint Source Plan approval by EPA and NOAA and Private Forest Accord Adaptive Management Program and development of effectiveness monitoring programs.

From January through July 2023, staff and managers from ODF and DEQ continued to meet every other month. Staff continue to coordinate on the topics listed above, as well as on climate change considerations, DEQ's contract with Planet Sciences to map shade along all streams in Oregon, revisiting the multi-agency forest conversion MOU, outcomes from the 2023 legislative session and planning on the next legislative priorities.

5.0 Eastern Region

5.1 Powder Basin Total Maximum Daily Load for Bacteria (Baker County)

DEQ hosted a hybrid public hearing in Baker City on Aug. 15 to provide information and accept verbal comments on a [proposed rulemaking for the Powder River Basin Bacteria Total Maximum Daily Load](#). (TMDL). About 80 people attended in person and seven people attended virtually. Many of the comments expressed concern about how the rule would affect ranching in the area. This rule would establish a water quality management plan that includes pollutant management strategies, a list of parties responsible for developing management plans and implementing strategies, and a timeline to reduce pollutant loads and attain water quality standards. DEQ rescheduled a virtual-only hearing that was originally set for July 26 at the request of Baker County. DEQ also extended the public comment deadline and accepted comments until 4 p.m. on Aug. 31, 2023.

5.2 Lower Umatilla Basin Groundwater Management Area (LUBGWMA - Morrow and Umatilla Counties)

DEQ continues to support Oregon Health Authority in its efforts to ensure every resident in the LUBGWMA has access to safe drinking water testing, treatment and provisioning if needed. DEQ hydrogeology experts attended two community open houses OHA hosted Aug. 23 and 24 in the cities of Umatilla and Boardman to provide information, listen to concerns, and answer questions about nitrate sources and trends in the area. DEQ also continues its work supporting the [LUBGWMA Committee](#), which held a full-day workshop Aug. 17 for members and supporting organizations to share information and discuss priorities for identifying and implementing actions to reduce nitrate levels in the basin.

6.0 Northwest Region

6.1 K-Mart Fire

On Wednesday, July 19, 2023, a fire broke out from unknown causes at the former K-Mart site at 12350 NE Sandy Blvd in Portland. Charred pieces and heavy dust traveled downwind, impacting properties,

including private yards and Parkrose School District property. City of Portland Parks and Recreation staff tested material from Luuwit View Park, which came back as containing asbestos.

In response, DEQ, the U.S. Environmental Protection Agency, Portland Bureau of Emergency Management, Multnomah County Public Health and Prologis formed a joint incident command. Prologis is the lessee and operator of the former Kmart site. This resulted in a number of actions, including: a hybrid community meeting; instructions on how to safely clean and remove debris from homes and yards; debris and air monitoring conducted by EPA; an interactive map with locations of the samples taken and results; and an online form to report debris to Prologis. None of the subsequent sample results after the one collected by Portland Parks were confirmed for asbestos in 16 air samples and 11 debris samples.

7.0 Western Region

7.1 Stella Jones – Yamhill County

A diesel-containing wood preservative spilled from a retort at the Stella-Jones facility at 7 a.m. on Monday, Aug. 21, 2023. This is the former Taylor Lumber Superfund site in Sheridan, Yamhill County. The total estimated release of diesel and dichloroethylisothiazolinone, or DCOI, was about 24,000 gallons, much of it went to secondary containment. An estimated 2,400 gallons escaped secondary containment and went to on-site pavement, on-site storm collection system, on-site gravel, and off-site through the sanitary sewer and into a lagoon at the City of Sheridan's wastewater treatment plant. The wood preservative is approximately 97 percent diesel (petroleum) and three percent DCOI.

Early reporting by the facility was not accurate. The initial report said 100 gallons were spilled and they provided an SDS with biodiesel (98%) as the main carrier for the DCOI. The City of Sheridan observed the amount spilled and requested DEQ support. DEQ later found out that the volume was much larger, and that the carrier was heating oil/diesel. EPA and a START contractor have supported DEQ.

At this time, Stella-Jones has ceased production activities until additional safety and maintenance training is completed. Sanitary sewer cleanup was completed Aug. 25, 2023 and cleanup of the on-site stormwater collection system cleanup began the same day. DEQ and EPA presented to the City Council Aug. 24, 2023, and additional remediation is contingent upon sampling being conducted at the site.

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).

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