

State of Oregon

Department of Environmental Quality Memorandum

Date: Jan. 17, 2024

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda item B, Informational item: Director's Report
Jan. 24, 2024, EQC meeting

1.0 Director's Office

1.1 Climate Protection Program update

On Dec. 20, 2023, the Oregon Court of Appeals issued an opinion on *NW Natural Gas Company v. Environmental Quality Commission*. The opinion finds the Climate Protection Rules (OAR 340-271) to be invalid because of a failure to comply with rulemaking notice requirements specific to facilities holding Title V permits.

The rules remain in effect until the court issues a final judgment. That would happen roughly one week after the deadline to petition for review by the Oregon Supreme Court (Jan. 24, 2024), if the state does not file such a petition. If the state files a petition for review, then the rules would generally remain in effect until that petition is fully resolved.

The opinion is disappointing and work to evaluate the state's response and other next steps is ongoing. DEQ will keep the commission updated on this issue.

1.2 Office of Compliance and Enforcement – Supplemental Environmental Project Policy

In December 2023, DEQ updated its Supplemental Environmental Project Policy to incorporate principles of environmental justice. A SEP is an environmentally beneficial project that an entity that receives a penalty may agree to undertake in lieu of paying a portion of its civil penalties. DEQ's SEP policy directs DEQ enforcement staff on factors to consider in reviewing and approving a SEP proposal in the process of settling an enforcement action.

The updated SEP policy incorporates principals of environmental justice by expanding opportunities for community members impacted by violations to contribute to the project selection process. In addition, the updated policy directs DEQ staff to host annual community listening sessions to discuss the policy and its effectiveness, and to solicit SEP project ideas for pre-approval. Finally, the policy directs DEQ to post all pre-approved projects on its website to enhance awareness and participation in the policy.

On Jan. 25 and Jan. 26, 2024, DEQ will hold two virtual public listening sessions on the updated policy.

1.3 Strategic Planning update

DEQ's Strategic Planning Steering Committee continues to make progress developing an anti-racist plan for the agency. Most recently, the committee has been writing early drafts of DEQ's mission and values statements, using input from listening sessions with BIPOC affinity groups, the DEI Council and others.

The committee also has started working on strategic goals to include in the plan. Here are some highlights of recent work:

- **Tribal Subcommittee.** To specifically address Tribal-related goals. This subcommittee aims to comprehensively review DEQ's existing Tribal-related information and previous outreach and consultation with Oregon Tribes, identify any gaps, and collaboratively develop goals that resonate with and support the unique needs and perspectives of Oregon Tribes.
- **Communications Subcommittee.** To share information about the planning process with the Environmental Quality Commission, leadership and the agency. This subcommittee provides monthly updates through the DEQ Digest and on the [Strategic Planning Q-Net page](#).
- **PESTLE/SWOT Subcommittee.** Governor Kotek's template for strategic planning has a section for a PESTLE and SWOT analysis. These are tools often used to inform strategic planning. PESTLE is a review of external factors influencing the organization: Political, Economic, Social, Technological, Legal, and Environmental. SWOT is an evaluation of the organization's: Strengths, Weaknesses, Opportunities, and Threats. This subcommittee is reviewing previous work by consultants BerryDunn and the Organizational Assessment by consultants Engage to Change to:
 - Describe at a high level what those assessments were and the key findings.
 - Describe what we learned from those two assessments – focusing on where they prioritize marginalized or impacted voices.
 - Focus on areas of overlap – themes that came through strongly to inform strategic planning.
 - Describe gaps – things we could have done but didn't have the resources or ability or time to do.

To inform the development of the plan, the steering committee has met with the BIPOC staff group, the BIPOC manager group and the DEI Council. In the coming month, the committee will meet with agency support staff, the Veterans affinity group, DEQ Pride and the Disability affinity group.

1.4 Equity Administrator and staffing updates

Effective Feb. 1, 2024, Lydia Emer will begin serving as the Agency's Equity Administrator. Lydia will serve in this role for one year, a role specifically dedicated to working with groups and teams across the department – including the DEI Council and Environmental Justice Work Group – to set up this office for success. Lydia's work will also include:

- Hiring DEI- and EJ-specific positions and ensuring they are well supported and integrated.
- Supporting and ensuring the timely completion of the strategic plan and DEI plan.
- Coordinating the agency action in response to the Organizational Assessment released earlier this year.
- Building and sustaining relationships and communication between the various teams and groups focused on DEI and Environmental Justice work.

The transition requires making organizational changes in leadership, including:

- Mike Kucinski will serve as Interim Land Quality Administrator.
- Kieran O'Donnell will serve as Interim Deputy Water Quality Administrator.
- Becka Puskas will serve as Interim Office of Compliance and Enforcement Manager.

1.5 Priority Climate Action Plan

The [Climate Pollution Reduction Grant Program](#) is one of many federal funding opportunities created through the [Inflation Reduction Act](#) and runs through the U.S. [Environmental Protection Agency](#). Through this grant, the state of Oregon will create a Priority Climate Action Plan (due to EPA March 1,

2024) and a Comprehensive Climate Action Plan (due to EPA fall of 2025) to highlight opportunities to reduce climate pollution. Oregon's approach to the PCAP is guided by extensive work of Oregon and local jurisdictions, and includes measures that will qualify for the [Climate Pollution Reduction Implementation Grant application](#).

The [Draft Priority Climate Action Plan](#) focuses on measures to reduce emissions from transportation, residential and commercial buildings, and food waste and landfills. The measures to reduce greenhouse gas emissions included in this draft PCAP were selected to meet the specific EPA criteria provided in the implementation grant notice guidance. These measures have been identified as "priority measures" for the purposes of pursuing this funding.

A public webinar was hosted on Jan. 11, 2024, and the slides from that are posted on the [DEQ CPRG website](#). **DEQ is requesting public comment on the draft PCAP via a [feedback survey](#) until Jan. 26, 2024.** Staff will keep the commission updated on the plan finalization and efforts to secure federal funds to support priority actions.

2.0 Air Quality

2.1 Oregon Clean Vehicle Rebate Program 2024 reopening

The Oregon Clean Vehicle Rebate Program was temporarily suspended on May 1, 2023, due to program participation outpacing allocated funding. The program receives \$12 million a year or 45% of the vehicle privilege tax, whichever is larger. The program anticipates receiving its next funding allocation of \$15 million in March 2024, allowing the program to reopen.

The program must first process 741 rebates from the 2023 waiting list for vehicles purchased prior to suspension. Per the OCVRP rules, once rebates from the 2023 waiting list are processed, priority is given to Charge Ahead rebates for low- and moderate-income applicants followed by Standard rebates for all applicants. Due to increasing program demand, DEQ expects the 2024 funding allocation to allow the program to remain open for about two months. Prior to reopening, DEQ will notify interested parties, participating dealerships and the public of the 2024 program open period anticipated in late March or early April.

2.2 PM National Ambient Air Quality Standard revision update

On Jan. 6, 2023, the Environmental Protection Agency proposed a revision to the primary annual PM_{2.5} standard from its current level of 12.0 µg/m³ to within the range of 9.0 to 10.0 µg/m³. DEQ and OHA provided [joint comment](#) to EPA on the proposed rule during the public comment period, which closed on March 28, 2023. DEQ anticipates EPA will publish the final rule by the end of January 2024. DEQ will keep the commission informed as soon as the rules become final and about what future work will be required by DEQ and Oregon communities based on the final revised NAAQS standard.

3.0 Water Quality

3.1 Proposed aquatic life criteria updates

DEQ is conducting a rulemaking to adopt new aquatic life criteria for acrolein, carbaryl, and diazinon, as well as the federally promulgated criteria for aluminum and cadmium, and to update the criteria for cadmium and tributyltin based on EPA's most recent recommendations. These revisions will revise Oregon's Aquatic Life Water Quality Criteria for Toxic Pollutants (Table 30 of Oregon Administrative Rule 340-041-8033) and corresponding text in OAR 340-041-0033 and will ensure the protection of

Oregon fish and aquatic life. They will not be effective for Clean Water Act programs until EQC adoption and subsequent EPA approval.

DEQ held the first Rulemaking Advisory Committee meeting on Sept. 12, 2023, and the second on Nov. 13, 2023, to receive input on the fiscal and economic implications for entities impacted by the proposed aquatic life criteria updates. The committee did not suggest or provide evidence that there would be a significant adverse impact on small businesses in Oregon. The RAC members were generally supportive of the proposed criteria updates and emphasized the environmental and regulatory benefit of adopting the proposed criteria. DEQ is incorporating RAC input into rule package documents. DEQ will publish the draft rules for public comment on the proposed changes and hold a public hearing in early 2024. Once DEQ receives and responds to public comment, DEQ will finalize the proposed criteria and present the rulemaking package to the EQC for consideration in mid-2024. More information about the rulemaking is available on the [Aquatic Life Toxics Criteria 2024 webpage](#).

3.2 Integrated Water Resources Strategy updates

The Water Resources Department is leading an inter-agency project team to update the statewide Integrated Water Resources Strategy with an emphasis on environmental justice, climate change adaptation, and the water/land-use nexus. The IWRS is Oregon's broad strategy for meeting instream and out-of-stream water needs, considering water quantity, water quality and ecosystem needs (published in 2012 and 2017). The project focus in 2023 was on public and agency engagement to inform development of the 2024 IWRS. Over 1,000 Oregonians provided input through surveys, in-person and virtual meetings, and web-based methods. WRD's project lead, Crystal Grinnell, presented on the project to the EQC in July of 2023 ([agenda item J](#)) with an expected project completion date of March 2024. The schedule has been extended to provide more time for public and agency review, including agency boards and commissions. The 2024 IWRS will evolve from an internal agency draft in January to a public review and comment period in March. An updated draft is anticipated to be available for a second public comment opportunity in May. The Oregon Water Resources Commission will hear public testimony and consider adoption of the 2024 IWRS at their September meeting.

4.0 Eastern Region

4.1 Port of Morrow

DEQ is [requesting public comment](#) on a proposed permit modification for the Port of Morrow. The modification is needed to approve the port's modified Operations, Monitoring and Management plan, which is a requirement of the port's permit. The plan describes how wastewater is monitored and managed and the restrictions in place to protect groundwater. As part of the permit modification, the port has requested to add acreage to its land application program to better manage its nutrient-rich water while it constructs the necessary wastewater treatment infrastructure. This expansion would help protect groundwater by allowing more acreage for nitrogen uptake. The proposed additional land is in a remote area south of existing population centers and is distant from private wells. The addition of this acreage is part of the port's compliance plan required under the recent settlement agreement. In response to a request from the public, DEQ extended the public comment deadline from Dec. 28, 2023, to Jan. 29, 2024.

4.2 Powder River Basin bacteria TMDL

DEQ is developing a water quality improvement plan known as a Total Maximum Daily Load, or TMDL, for bacteria in the Powder River Basin. A TMDL analyzes sources of pollution and identifies pollution reduction efforts to improve water quality. This is needed because various stretches of waterways in the Powder River Basin contain fecal bacteria above safe levels. Fecal contamination in water poses serious risk of illness for people, livestock, and wildlife. The Powder River Basin bacteria TMDL was previously

available on public notice from June-August 2023, and DEQ held a formal public hearing on Aug. 15, 2023, to accept verbal comments on the TMDL. In response to requests received, DEQ reopened the public comment period on Jan. 3, 2024, to allow for additional conversations and feedback on the draft documents. This public comment period will close on Feb. 9, 2024. DEQ is hosting a community open house in Baker City on Feb. 1, 2024, in collaboration with federal and state agency partners to provide an opportunity for residents to ask questions and explore related resources available to the agricultural community. DEQ originally anticipated presenting the TMDL to the EQC for rule adoption in November 2023, and now anticipates presenting it in spring 2024.

5.0 Northwest Region

5.1 Intel air quality permit modification

Intel proposes to make changes to operations at their two semiconductor manufacturing facilities in Washington County, specifically Hillsboro and Aloha. The proposed changes include additional fabrication cleanroom space at the Hillsboro campus and increased emissions from the existing fab spaces at both campuses due to advances in manufacturing technology and additional manufacturing support operations. The draft air quality permit includes special conditions for nitrogen oxides ambient monitoring, Best Available Control Technology analysis, voluntary pollution controls, more frequent testing, and testing of new pollution controls. Both campuses emit air contaminants and are regulated by DEQ's Air Quality Permitting Program under a single air quality permit, called a Standard Air Contaminant Discharge Permit.

The public comment period opened Jan. 10, 2024, and is scheduled to close on Friday, March 1, 2024. DEQ will hold a virtual public hearing on the draft permit Feb. 15, 2024. Additional information about the project is available online at ordeq.org/intel.

6.0 Western Region

6.1 JH Baxter update

Work on soil removal from two dioxin-contaminated residential properties in west Eugene near the JH Baxter site began on Jan. 16, 2024. Work on removals for seven contaminated yards was anticipated to begin in November 2023 but the request for proposals resulted in no responses. DEQ is using its own contractor to address the two highest priority yards, with another bid process for addressing the balance of the removals due to begin soon after the current removal starts.

6.2 Lazy Days facility permit modification

The Lazy Days facility (a fire recovery project) along the McKenzie River has applied for a Water Pollution Control Facility Onsite permit modification that will trigger the Three Basin Rule process, which requires EQC approval. The proposal includes increasing the current permit flow limits from 4,850 gallons per day to 6,100. A draft permit modification is ready and should be out for public comment in late January 2024. This topic may be on the EQC agenda in May 2024.

6.3 Water quality impacts from Green Peter Reservoir and Lookout Point Reservoir drawdowns

On Nov. 3, 2023, DEQ received a complaint about a turbid plume entering the Calapooia River from the Albany Water and Hydroelectric Plant. Upon investigation, DEQ determined that the turbid discharge was a direct result of the Green Peter Dam drawdown, carried out by the U.S Army Corps of Engineers pursuant to the [Green Peter Dam Fall Downstream Fish Passage Injunction Measure](#), releasing large

quantities of suspended solids into the Middle Santiam River that were then conveyed through Foster Lake, into the South Santiam River and ultimately discharging to the Willamette River. The rapidly decreasing water level in the Santiam River reservoirs, along with drawdowns on other reservoirs, resulted in violations of water quality standards and substantial impact to downstream public water suppliers, including the cities of Lebanon, Sweet Home and Lowell.

On Dec. 14, 2023, DEQ issued a Pre-Enforcement Notice to the USACE for violations of ORS 468B.025(1)(a): causing pollution of waters of the state; and ORS 468B.025(1)(b): reducing the water quality of waters of the state below water quality standards. The notice outlines corrective actions requiring the USACE to provide a Sediment Characterization Report for accumulated sediment behind Green Peter Dam, improve communications with downstream users to provide notice of potential impacts, and complete and submit to DEQ, for review and approval, a comprehensive study that identifies Best Management Practices such as slower, staggered drawdown, turbidity sampling and monitoring, and other control methods USACE will implement to reduce or eliminate water quality impacts prior to future drawdowns. Corrective actions have a deadline of April 1, 2024.

Translation or other formats

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