

State of Oregon

Department of Environmental Quality Memorandum

Date: Sept. 23, 2024

To: Environmental Quality Commission

From: Leah Feldon, Director

Subject: Agenda item M, Informational item: Director's Report
Sept. 26-27, 2024, EQC meeting

1.0 Director's Office

1.1 Climate Pollution Reduction Grants

The Climate Pollution Reduction Grant program is a part of 2022 federal legislation called the Inflation Reduction Act. CPRG provided \$5 billion to the U.S. Environmental Protection Agency to help states, Tribes and cities develop and implement plans to reduce greenhouse gas emissions, particularly in ways that benefit Low-Income and Disadvantaged Communities and provide those benefits in the near term – over the next five years or less.

The U.S. EPA has structured its CPRG program into two parts: 1) non-competitive grants to all states and certain metropolitan areas and Tribes, to develop near- and long-term plans to reduce greenhouse gas emissions in their jurisdictions, and 2) competitive grants to implement near-term actions to reduce emissions.

DEQ is now the recipient of two awards from the U.S. EPA, one in each category.

Planning Grant: DEQ continues to work closely with the Oregon Department of Energy to develop Oregon's Comprehensive Climate Action Plan. DEQ will complete and deliver the plan to the U.S. EPA in December 2025. DEQ is preparing to launch a variety of public involvement activities to inform the plan development, including:

- A feedback survey designed to collect input from state agencies, local jurisdictions, businesses and nonprofits.
- Multiple opportunities for the public to provide comment.
- Contracts with multiple Tribal Governments to gain perspective for the CCAP.

The final plan will serve as a comprehensive climate action plan for the state of Oregon, including Low-Income and Disadvantaged Communities outreach and a workforce needs assessment.

Climate Equity and Resilience Through Action: In July 2024, the U.S. EPA announced they are fully funding Oregon's \$197 million implementation grant proposal. This significant infusion of federal funds will support a variety of greenhouse gas reducing program and policies, including:

- Zero-Emissions Vehicle rebates for passenger vehicles and medium- and heavy-duty trucks, and

- associated charging infrastructure;
- Incentives for building energy efficiency upgrades;
- Incentives for heat pumps and weatherization; and
- Food waste reduction and methane capture at landfills.

The U.S. EPA and DEQ hope to finalize the contract for this award by mid-October 2024, in order to begin grant implementation in early 2025. DEQ and other partner agencies, including the Oregon Housing and Community Services Department, the Oregon Health Authority, the Oregon Department of Energy, the Oregon Department of Transportation, and the Energy Trust of Oregon, are working diligently to ensure the U.S. EPA has the details needed for contract finalization. In addition, the team is preparing to hire grant-funded staff, ensure timely intergovernmental agreements and contracts, and develop robust tracking mechanisms for this complex grant.

1.2 Rulemaking

DEQ maintains a [comprehensive rulemaking plan](#), detailing all rulemaking projects underway by the department, including the anticipated date the agency intends to bring proposed rules to the commission for consideration. Since the last time the commission formally reviewed the plan, the following rulemaking projects have been incorporated into the plan:

- Control of Volatile Organic Compounds: This rulemaking will propose reductions of emissions of volatile organic compounds (VOCs) from consumer products and architectural and industrial maintenance coatings. This is to reduce key pollutants that impact public health and impact the State's ability to meet federal Air Quality standards.
- Listing of PFAS as a hazardous substance: This rulemaking proposes to include perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), including their salts and structural isomers, in the definition of hazardous substances in Oregon Administrative Rule, which would give the Department authority to require investigation, removal and remedial actions of PFOA and PFOS releases and align with the U.S. EPA approach. PFOA and PFOS are among the most commonly detected PFAS, are known or suspected carcinogens, and have been shown to exhibit toxicity effects to humans and wildlife even at low levels of exposure.
- Underground Storage Tanks updates: The intent of this rulemaking is to improve the safety of underground storage tank (UST) systems by increasing DEQ oversight of the work that UST service providers and supervisors perform on UST systems, and by ensuring that those who work on UST equipment demonstrate a minimum competency in performing that work. The rules governing UST service providers were last updated in 2003, and do not reflect the newer requirements for testing of UST equipment that were updated in Oregon in 2018 and implemented in 2020.

DEQ intends to provide a comprehensive update on the rulemaking plan to the commission at its January 2025 meeting.

2.0 Air Quality

2.1 Community Air Action Planning Program

DEQ was awarded an [EPA grant](#) in December 2022 to conduct community-level air monitoring in four communities across the state. The Air Quality Division is using the community-level air monitoring grant to support the design and testing of [Community Air Action Planning](#), or CAAP. CAAP is a pilot program

designed to explore a place-based approach to improve communities' air quality knowledge and capacity for taking collective action to address localized air pollution challenges.

Chiloquin, McMinnville, Medford and the Gresham neighborhoods of Rockwood and Wilkes East have been selected as CAAP's four community partners during the program's pilot phase. Outreach and relationship building along with finalizing the Quality Assurance Project Plan for the monitoring work is the team's focus this fall so work can begin in the communities in November 2024. DEQ is currently working closely with program partner Neighbors for Clean Air on community outreach, relationship building and developing capacity building materials.

2.2 Revised PM NAAQS Implementation

On Feb. 7, 2024, the [U.S. EPA announced](#) a revised National Ambient Air Quality Standard for PM_{2.5} (from an annual standard of 12.0 µg/m³ to 9.0 µg/m³). When this occurs for any criteria pollutant, the Clean Air Act requires all states to [demonstrate](#) whether monitoring areas will meet or attain the new standard. Only monitoring areas that are a part of the U.S. EPA State or Local Air Monitoring Stations network can be compared to the NAAQS. DEQ's preliminary analysis shows that all 10 monitoring areas in Oregon will attain the new standard. DEQ is continually analyzing 2022-2024 air quality data to confirm attainment and will submit a letter of final recommendations to the Governor for approval and signature. Final recommendations are due to the U.S. EPA by Feb. 7, 2025, and the U.S. EPA will make final attainment designations after its own analysis by Feb. 6, 2026.

2.3 Clean Truck Rules

On July 3, 2024, Director Feldon approved delaying the implementation of the Heavy-Duty Low NO_x Omnibus Rules until 2025. The original Heavy-Duty Low NO_x Omnibus Rules were adopted as part of the [Clean Trucks Rules](#) by the EQC in November 2021, and were scheduled to go into effect starting in 2024. This action makes permanent a [similar temporary rule](#) the EQC adopted on Nov. 16, 2023. The rules require conventionally fueled heavy-duty vehicle and engine manufacturers to meet tougher NO_x and particulate matter emission standards, overhaul engine testing procedures and further extend engine warranties to ensure NO_x and PM emissions are reduced over the lifetime of each new vehicle and engine.

The new amendments also include adopting recent California updates that provide additional compliance flexibility to engine manufacturers. They allow engine manufacturers to sell a larger volume of new federally certified internal combustion engines, referred to as "legacy engines" in the rule. Under the Federal Clean Air Act, states like Oregon that wish to adopt state-specific new vehicle emission standards can only do so if the standard is identical to those adopted by the state of California.

DEQ also notified engine manufacturers that it will not pursue enforcement or assess civil penalties for new school bus and solid waste collection vehicle engines sold or delivered for sale in Oregon. DEQ intends to propose new rule amendments to create additional exemptions under the Omnibus Rules for school bus and solid waste collection vehicle engines. Reasons for the exemptions are a result of comments received during the rulemaking process requesting exemption of certain vehicle sectors from the rules, including a concern about critical services provided by certain specialty sectors, a smaller than predicted number of engines that meet the new standard, and the ability of specialty sector fleets to acquire legacy engines.

Additionally, the Advanced Clean Trucks Rule, adopted as part of the 2021 Clean Trucks Rulemaking, also goes into effect starting in 2025. This rule requires medium and heavy-duty vehicle manufacturers to sell a certain percentage of their total vehicle sales as zero-emission vehicles. The regulations contain many compliance flexibilities by which manufacturers can meet their obligations, either through selling

ZEVs themselves, purchasing credits from other manufacturers that sell ZEVs in Oregon, or by making up their deficits in the next model year. However, business decisions made by engine manufacturers going into 2025 indicate they are choosing to restrict the number of diesel vehicles made available to fleets and truck dealers to ensure they can meet their ZEV targets.

DEQ is evaluating options for potential commission consideration to contain costs and support full implementation of these rules. This includes adopting amendments proposed in California that provide greater flexibility to engine manufacturers.

3.0 Land Quality

3.1 Oregon E-Cycles Rulemaking

Proposed rules to modernize Oregon's E-Cycles program are open for public comment through Sept. 30, 2024. DEQ's Materials Management Program plans to present the proposed rules as an informational item at the November 2024 EQC meeting. The program will present the proposed rules for action at the January 2025 EQC meeting.

The Oregon Legislature adopted [House Bill 3220](#) in 2023, modernizing the longstanding electronics recycling program, Oregon E-Cycles. This program prevents toxins from entering the environment through illegal dumping and diverts materials from Oregon landfills, ensuring precious and rare earth metals can be recovered for new electronics. The proposed rules expand the type of electronic devices that the program covers. They will also increase the minimum number of collection sites and will require the program to provide equitable service throughout the state, including to rural areas and historically underserved populations.

The program follows a product stewardship model, a waste management strategy that requires producers to share responsibility for the end-of-life management of their products. Typically, manufacturers will designate and join a producer responsibility organization to help them fulfill their obligations under the law. A manufacturer pays fees to that organization to cover the program costs, including the costs of collection and processing of materials, as well as DEQ's administrative fee. Product stewardship has become a helpful tool in the toolbox of managing materials, both across the country and around the world.

Additional information can be found on the [E-Cycles 2024 Rulemaking webpage](#).

4.0 Water Quality

4.1 Three Basin Rule – Petition to Amend from Marion County

DEQ received a petition from Marion County on Aug. 8, 2024, requesting amendments to the Three Basin Rule ([OAR 340-041-0350](#)). As described in a May 2023 EQC informational presentation (Item L), the Three Basin Rule was originally established in 1976 to protect drinking water source areas and recreational fishing opportunities in the Clackamas, McKenzie and North Santiam basins.

Marion County proposes to build a new wastewater treatment plant for Mill City and Gates. Current plans include a discharge to groundwater that may indirectly connect to the surface waters of the North Santiam River. Under the current Three Basin Rule, should this plan proceed as designed, this indirect discharge into the North Santiam River from a new wastewater treatment plant would not be eligible for a DEQ Water Pollution Control Facility permit. The petition proposes changes to the Three Basin Rule to allow DEQ to permit a new publicly owned treatment plant discharging to groundwater, even if it may connect

indirectly to surface water, if it meets certain requirements proposed by the petitioners.

Following an initial evaluation of the petition, DEQ responded to Marion County on Aug. 20, 2024, providing the opportunity to resubmit the petition so that it clearly addressed the required elements of a petition to amend a rule, as required by OAR 137-001-0070 ("Petition to Promulgate, Amend, or Repeal a Rule"). On Aug. 30, 2024, Marion County resubmitted its petition. Under state law, agencies have 90 days to act on the petition. DEQ staff are conducting a more detailed review to confirm that legal requirements for the petition have been met and are preparing to bring an action item on this topic before the EQC at its November 2024 meeting. As required by the regulations governing agency petitions, DEQ opened a public comment period on the petition. DEQ will accept comments through Oct. 6, 2024, and summarize comments received as part of a staff report to inform EQC's decision.

4.2 2024 Water Quality Standards Triennial Review

The Clean Water Act requires states to review their water quality standards at least once every three years to identify revisions that should be made to incorporate new scientific information, meet federal requirements, clarify standards, or improve the implementation of standards in our water quality programs, such as National Pollution Discharge Elimination System permits, assessment and Total Maximum Daily Loads. This process is called a Triennial Review. The Water Quality Standards Program is conducting a Triennial Review to identify and prioritize these water quality standards work needs. The Triennial Review will result in a workplan of priority projects that the Water Quality Standards Program expects to complete or initiate from 2025 through 2027.

DEQ plans to initiate public comment in October 2024 on a draft work plan and present the results of the Triennial Review to the EQC in March 2025.

Additional information can be found on the [Water Quality Standards Triennial Review webpage](#).

5.0 Eastern Region

5.1 Port of Morrow Permit Modification

The Port of Morrow submitted a water quality permit modification request to DEQ. The permit modification proposes to move up the timeline on ending winter application by increasing storage, requires the port to develop an enhanced risk-based irrigation plan prior to the 2024–2025 non-growing season to reduce potential nitrate leaching to groundwater, expands the area for land application to minimize potential leaching, and enhances required monitoring practices. DEQ will host a public hearing in Boardman on Oct. 9, 2024, and public comments are due by 5 p.m. on Oct. 11, 2024.

5.2 Lower Umatilla Basin Groundwater Management Area Nitrate Reduction Plan

On Sept. 20, DEQ, along with the Oregon Health Authority, the Oregon Department of Agriculture and the Oregon Water Resources Department released [The Lower Umatilla Basin Groundwater Management Area Nitrate Reduction Plan](#). With feedback from the U.S. EPA, this joint-agency plan pulls together the current and newer activities being implemented by DEQ, the Oregon Department of Agriculture, the Oregon Health Authority and the Oregon Water Resources Department. The goal of the workplan is to ensure the state is collaboratively working toward the long-term goal of reducing the nitrate contamination in the LUBGWMA.

5.3 Crook County Domestic Well Concerns

Private well owners north of the city of Prineville have submitted complaints to multiple state agencies about their well water, including concerns for potential impacts on human health. The reports include

concerns about drinking water quality (color and taste) and its impact on their household pipes, appliances, and suitability for use by livestock and animals. There is not a comprehensive understanding of where private wells are and the condition of the water coming from those wells, nor is there funding for a study. Following a site visit and open house, DEQ has been working with the federal delegation and state agencies to identify alternative funding opportunities and explore other regulatory options to advance understanding of this issue. Despite the funding challenge, DEQ has hired a consultant to develop a proposed sampling and analysis plan for use. DEQ is working with other state agencies to determine the next steps in evaluating groundwater conditions in the impacted area.

5.4 Arlington Sinking Vessel Emergency Response

DEQ and the U.S. EPA oversaw an emergency response to a diesel oil spill from a sunken vessel, the Mermaid I, on Aug. 13, 2024, at the Port of Arlington marina along the Columbia River. DEQ and the U.S. EPA were in unified command for two weeks during the emergency response, with DEQ acting as the state on-scene coordinator and the U.S. EPA as the federal on-scene coordinator. The emergency response consisted of over 30 DEQ, U.S. EPA and contractor personnel. The cleanup team brought in cranes and heavy equipment to remove the vessel from the marina. Additionally, cleanup crews stopped the spread of diesel in the marina, recovering 550 gallons out of a total of 900 gallons of spilled diesel. Local monitoring indicated that no diesel was affecting the beach or wildlife. The emergency response concluded on Aug. 28, 2024. The cause of the sinking is unknown.

6.0 Northwest Region

6.1 Zenith Energy

Zenith Energy Terminal Holdings, LLC, is a fuel products transloading facility located in an industrial part of northwest Portland near the Linnton neighborhood. The company accepts crude oil, diesel, renewal fuels and other fuel products from one mode of transportation, like railcars, and passes them along to another, such as marine vessels. In the interim, fuel products are stored at the facility in above-ground tanks.

DEQ will be posting the draft Air Contaminant Discharge Permit for public review and input this fall. DEQ will host a virtual informational meeting and two hearings, one in-person and one virtual.

Additional information can be found on the [Zenith Energy webpage](#).

6.2 NEXT Renewable Fuels Oregon, LLC

NEXT Renewable Fuels Oregon, LLC, is proposing to construct a renewable diesel and sustainable aviation fuel manufacturing facility at the Port of Columbia County's Port Westward Industrial Park, in Clatskanie, along the Columbia River. The proposed facility will receive and process a variety of organic waste materials, such as used cooking oil, animal tallows and fish grease to produce the fuel products that work just like their petroleum-based equivalents. NEXT expects to have the production capacity of up to 50,000 barrels (1.58 million gallons) of clean fuel per day at full capacity. Renewable fuel products will be shipped offsite via pipelines, trucks, and railcars, pending market conditions.

DEQ has posted the draft 401 Water Quality Certification for public review and will collect input through Oct. 25, 2024. The 401 Water Quality Certification is part of the U.S. Army Corps of Engineers 404 permitting process, which regulates projects that impact waters of the U.S. The hearing for the draft 401 Water Quality Certification is scheduled for Oct. 8, 2024. The purpose of the hearing will be to inform those interested of the status of the NEXT's 401 Water Quality Certification, answer questions, and accept verbal comments on the record regarding the draft 401 Water Quality Certification decision.

DEQ has issued an Air Contaminant Discharge Permit for the facility and anticipates applications for construction stormwater general permit and industrial stormwater general permit coverage in the future. These water quality permits and the 401 Water Quality Certification are necessary for NEXT to begin construction of the proposed facility.

Additional information can be found on the [NEXT Renewable Fuels, Inc. webpage](#).

Translation or other formats

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