

**Date:** Aug. 20, 2012

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda item P, Informational item: Director's dialogue  
Aug. 23-24, 2012, EQC meeting

**Northwest Environmental Advocates pesticide petition to EQC**

The Northwest Environmental Advocates sent a petition to the commission on Aug. 9, 2012, that proposes revised rules to protect fish and wildlife from pesticide use in Oregon. In summary, NWEA has drafted proposed rule amendments to DEQ's antidegradation and toxics rules. NWEA has also proposed a new pesticide rule and to amend the pesticide general permit. NWEA's petition to EQC bases its proposed actions and rules on reasonable and prudent alternatives associated with National Marine Fisheries Service, or NMFS, and U.S. Fish and Wildlife Service biological opinions. "Reasonable and prudent alternatives" are protective measures developed by the services to avoid the likelihood of jeopardy to the continued existence of threatened and endangered species.

The Endangered Species Act requires EPA and other federal agencies to consult with the services on actions that have the potential to affect listed species. These biological opinions and resultant reasonable and prudent alternatives were the outcome of earlier lawsuits against EPA for failing to consult with NMFS on the renewal of pesticide registrations. NMFS was subsequently directed by the federal court to conduct these biological opinions.

In Oregon, regulations for rulemaking petitions such as that submitted by NWEA require EQC to take action within 90 calendar days. During that time, EQC can grant or deny the petition. If EQC grants the petition, meaning the commission approves and accepts the petition, DEQ would initiate rulemaking. When a petition for rulemaking seeks to amend an existing rule, as is the case here, the commission must invite public comment on whether the petition should be granted and whether options exist for achieving the rules goals with less economic impact on businesses.

Therefore, DEQ proposes to put the petition out for public comment in mid-September. During this comment period, the public would have the opportunity to provide input on the proposed rule language contained in the petition. DEQ anticipates a public hearing occurring in mid-October in Portland. Following the public comment period, DEQ intends to bring the petition for

commission action at the Oct. 25-26, 2012, meeting. DEQ is currently reviewing the petition to ensure it is consistent with administrative rules in regards to petition requirements.

NWEA also asks EQC to petition the Board of Forestry and the Board of Agriculture to take additional measures to adopt NMFS and U.S. Fish and Wildlife reasonable and prudent alternatives. These petitions by EQC are authorized by existing provisions in the Forest Practices Act and the Agricultural Water Quality Management Act. NWEA also makes a connection to Coastal Zone Act Reauthorization Amendments, or CZARA, and Oregon's plan for salmon and watersheds. Specifically, the petition alleges the reasonable and prudent alternatives have not been carried out by EPA, which would, therefore, impact the approval of the CZARA program and subsequent loss of federal funding.

### **National Marine Fisheries Service Biological Opinion on 2004 Aquatic Life Toxics Criteria**

On August 15, the National Marine Fisheries Service completed its biological opinion on DEQ's water quality toxics standards adopted by EQC in 2004 to protect aquatic life. NMFS found that the criteria numeric values submitted by DEQ for copper, ammonia and cadmium are not sufficiently protective and could cause "jeopardy" to threatened and endangered species. "Jeopardy" means that NMFS found that the aquatic toxics criteria submitted by DEQ are likely to jeopardize the continued existence of endangered and threatened species in Oregon or are likely to destroy or adversely modify designated critical habitat.

Section 7(a)(2) of the Endangered Species Act requires federal agencies to ensure, in consultation with the U.S. Fish and Wildlife Service and NMFS, as appropriate, that their actions, such as approval of DEQ water quality standards, are not likely to jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their designated critical habitats.

EPA is expected to take action on NMFS's opinion by Nov. 30, 2012. EPA's action will likely include disapproval of DEQ's water quality toxics standards for copper, ammonia and cadmium criteria based on NMFS' biological opinion, as well as recommendations of alternative criteria, including aluminum. Prior to EPA's action, DEQ will review the opinion and work closely with EPA to begin developing criteria likely to be approved. Once DEQ receives EPA's action, DEQ will conduct rulemaking to propose any rule or criteria revisions following standard rulemaking procedures.

On April 7, 2006, Northwest Environmental Advocates filed suit against EPA for failure to perform its required duties under the Clean Water Act to approve or disapprove Oregon's submitted water quality standards within the timelines set forth in the Clean Water Act.

Following numerous related court actions, the court granted the motion to modify the completion date for the NMFS Biological Opinion to Aug. 15, 2012.

To note, the U.S. Fish and Wildlife Service issued its biological opinion on DEQ's 2004 aquatic life criteria on July 30, 2012, and did not find jeopardy with Oregon's toxics criteria.

### **TMDL Statewide Advisory Committee**

DEQ began contacting the 26 candidate members of this new statewide committee. The committee is an outgrowth of the new Implementation Ready TMDL process to provide a statewide forum for what these new TMDLs will look like. The committee has also become an extension of the 2011 House Bill 3613 workgroup, which met frequently during and after the 2011 session to discuss water quality issues. The committee will serve as a forum for communication and feedback on the framework for development and implementation of Implementation Ready TMDLs and water quality standards issues as they relate to the TMDL program.

Commissioner Armstrong has agreed to represent the commission on this committee, which also includes representatives from state agencies, industrial, municipal, nonpoint source, and environmental groups and EPA. DEQ intends for the group to meet quarterly, starting in October 2012.

### **Oregon approach to EPA Integrated Planning**

EPA has issued a policy encouraging local governments to develop an Integrated Plan for meeting Clean Water Act obligations. The policy outlines how local governments could develop a plan for meeting wastewater and stormwater obligations that put the highest priority on water quality benefits, along with incorporating green infrastructure and natural treatment system components. DEQ is strongly supportive of this approach, and is working with Oregon wastewater and stormwater utilities through Oregon ACWA to develop specific details.. As the integrated planning process develops, DEQ will bring a complete briefing on the Oregon approach to a future commission meeting.

### **DEQ proposed Clean Air Plan for Klamath Falls**

On July 20, DEQ proposed a plan to meet the federal fine particulate air quality standard in Klamath Falls. EPA designated Klamath Falls as a nonattainment area for fine particulate, also known as PM<sub>2.5</sub>, in December 2009, and that designation required DEQ to submit a final and EQC-approved reduction plan within three years. DEQ intends to bring the proposed final plan for commission action this December following the public comment process noted below.

The plan, developed by DEQ in collaboration with a local citizen advisory committee and Klamath County commissioners, includes a number of measures to reduce fine particulate

emissions from wood heating, burning and industry. These measures include improvements to the county's woodstove curtailment program, a ban on the use of burn barrels, requirements for cleaner fireplaces in new construction and restrictions on visible emissions and fugitive emissions from industry. The plan incorporates woodstove change-out efforts funded by the City of Klamath Falls, EPA and the American Recovery and Reinvestment Act, and commits to pursuing additional funds for woodstove change-outs. The plan also includes innovative approaches to accommodate new industrial emissions by enabling companies to offset increases with woodstove change-outs. DEQ held a public hearing on the plan in Klamath Falls on August 21. The comment deadline is Aug. 28.

### **Klamath Basin update**

The Upper Klamath and Lost Rivers TMDL reconsideration process continues. DEQ has nearly completed responses to the petitioners' questions and comments and has kept petitioners updated on the process. Point sources have provided DEQ with analyses in support of petition issues including the feasibility of seasonal pollutant limits, rather than the same limit year-around, the river's heat capacity as it affects PacifiCorp's hydropower project at J.C. Boyle Dam, and oxygen-demanding substances associated with in-water log handling. The U.S. Geological Survey under contract to U.S. Bureau of Reclamation has been analyzing the Upper Klamath Lake and the Klamath River as a comparison to the analyses that DEQ has relied on for setting TMDL pollutant limits. DEQ water quality analysts have reviewed this information and made recommendations for revisions in some cases and justified accepting our original decision in others.

Once completed and reviewed by the director, DEQ will issue the revised TMDL for public comment on the sections of the TMDL that have changed. Following the public comment period, DEQ will finalize the revised TMDL and submit it to EPA Region 10 for approval. Staff members have been in regular contact with EPA staff and have made them aware of some of the proposed revisions. DEQ plans to issue a revised and final TMDL before the end of 2012 barring new and unforeseen information.

### **Regional hazardous waste pesticide collection planned**

Union County is planning to host a regional pesticide collection event at the existing Household Hazardous Waste Facility in La Grande in mid-October 2012. Umatilla County growers will be sent invitations to the event, which has a goal to collect 800 pounds of pesticides from residents and the agricultural industry in Baker, Union and Wallowa Counties.

While Union County is coordinating logistical and funding resources specific to the fall collection event, the county has expressed interest to establish a permanent, regular and open agricultural pesticide collection program. DEQ is working with the county to investigate the opportunities for an ongoing regional pesticide collection program, similar to the regional

approach used in other eastern Oregon communities. Regional pesticide and hazardous household waste collection events help Oregonians safely remove and dispose of thousands of pounds of dangerous chemicals from use, and from the waste stream, each year. DEQ continues to work with counties and municipalities to schedule about 30 household hazardous waste collection events each year, in addition to the 11 year-round hazardous household waste facilities around the state.

### **Daimler Trucks Title V permit renewal**

Daimler Trucks has a truck painting facility located on Swan Island in north Portland. The facility's air quality Title V permit is up for renewal and neighbors have expressed concerns about the plant's emissions, which have been the source of complaints to DEQ and the facility for many year. DEQ has met with members of the community and Northwest Environmental Defense Center to hear concerns and ideas about how they would prefer to structure the public process for the permit renewal. DEQ has also met with Daimler multiple times over the past several months, including at the plant for a tour of the facility. The company has collected air samples over the past several months, and has expressed interest in conducting its own outreach with community members prior to DEQ's formal public process, which has not yet been scheduled. DEQ hopes to apply many of the lessons learned during its Portland Air Toxics Solutions project to the public outreach and involvement process for the permit renewal.

### **Blue Heron Paper Company**

The Blue Heron Paper Company, which declared bankruptcy earlier in 2011, has reached an agreement to sell its West Linn lagoon properties to two local public water districts. DEQ participated in the process, which closed in July, by entering into a Prospective Purchaser Agreement with the districts. The agreement helps indemnify the purchaser from certain liabilities, and is an incentive for the purchase and beneficial reuse of properties that may otherwise go vacant because they carry too much financial liability for a purchaser.

DEQ is currently working under agreement with Metro as it continues to conduct due diligence on the former Blue Heron mill property that it is interested in purchasing. Once sampling data is available in September 2012, DEQ will review the information and make a recommendation to the Metro Council on a possible future purchase of the mill site property.

### **Astoria Marine Construction Co.**

The Astoria Marine Construction Co. is a former industrial site in Astoria. The site is eligible for Superfund cleanup status, but the community raised concerns about the stigma attached to Superfund sites, and has been working with DEQ and EPA to find an alternative process that could clean up the site for redevelopment without declaring it a Superfund site. The preferred solution is a deferral, which means that DEQ, not EPA, would be responsible for the oversight of

the site cleanup, remediation and possible eventual return to use. EPA must make a decision regarding the deferral or listing of the site, and DEQ expects this decision in August.

After successfully identifying an insurance policy that will allow Astoria Marine Construction Co. to fund a comprehensive investigation of the site and proceed with cleanup, DEQ, EPA and AMCCO are working with several tribes to ensure effective coordination and involvement to complete the deferral of the site to DEQ. AMCCO and DEQ will be entering into an enforceable order that will guide investigations and ensure this work meets EPA's expectations. This project has been a multi-government and multi-agency endeavor, and DEQ believes that this collaborative approach will provide a successful environmental and community outcome for Astoria.

### **City of Halfway Wastewater Facilities Plan**

The City of Halfway has been awarded a \$43,000 Community Development Block Grant by the Oregon Infrastructure Finance Authority to develop a comprehensive update to its wastewater facilities plan. After a number of years of difficult communications and differences of opinions on municipal systems design and operation, Halfway now has the opportunity to design a waste water treatment system that will:

- Evaluate enhanced treatment and disposal alternatives to meet future demands or completely eliminate discharges to Pine Creek
- Assess designs and impacts associated with removing a portion of the existing lagoon treatment system from the Pine Creek floodplain
- Address design parameters associated with critical bull trout habitat designations in Pine Creek

DEQ has played a substantial role in the evolution of this plan. Cheryll Hutchens-Woods, Water Quality Division manager, Heidi Williams, Water Quality Division engineer, and Steve McMillan, Water Quality Division permit writer, all with the Pendleton office, have been instrumental in collaborating with and guiding the city to develop a long-term strategy that begins with this grant award. The final plan update is expected to be completed by early summer 2013. The Pendleton office and the Northeast Regional Solutions Center will work with the city through the planning phases so that timely construction of the improvements can be funded and implemented.

### **EQC 2013 proposal**

The commission has met on a fairly regular schedule for the past decade. This schedule, of six regular two-day meetings per year held roughly the third Thursday and Friday of every other month, has varied some but not significantly. As part of its overall outcome-based management work, DEQ evaluated the commission meeting schedule to assess areas for improvement and efficiency. Maintaining the current schedule of meetings would mean that DEQ staff and

commissioners would have a standing conflict of the February EQC meeting against the yearly legislative session. The agency's new approach to rulemaking, which the commissioners saw part of with the June 2012 presentation of the ECycles rules, complements this proposed schedule, and offers the commissioners and staff more predictability in the development process each calendar year.

For the 2013 meeting year, DEQ would like to propose the following changes:

- Have five, instead of six meetings, reallocated in the calendar year.
  - March, June, August, October and December
- Move the meeting days to third Wednesday and Thursday of the meeting month, to allow commissioners and staff to travel, if necessary, during the work week.
  - March 20-21, June 19-20, August 21-22, October 16-17 and December 11-12  
(this is the second week of December)
- Intend for each of these meetings to be full, two-day meetings to make best use of the commissioners' time.
- Hold three of the five meetings outside of Portland, one in each of DEQ's geographic regions.
- Hold the other two meetings in Portland, likely at the DEQ headquarters.
- At each meeting, arrange an informal day-before or day-after opportunity for commissioners to do field work or participate in a facility tour with DEQ staff. The tours and field work would be optional and meant as a supplemental opportunity for commissioners who chose to participate.
- Issue a monthly director's report, effectively the director's dialogue, to the commissioners by paper or online posting

DEQ feels that the proposed changes would make the most effective use of the commissioners' time, efficiently use state funds, allow for more staff/commissioner interactions outside of the formal meeting process, though all state meeting and quorum laws will be followed for any non-meeting events, and would minimize conflicts for agency staff due to the annual legislative sessions.