

Date: Oct. 22, 2012

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item I, Informational item: Director's dialogue
Oct. 25-26, 2012, EQC meeting

Statewide TMDL Policy Committee

DEQ has formed a statewide TMDL Policy Committee to generate input and discussion on TMDL policy issues related to development and implementation and water quality standards. DEQ is collaborating with the Oregon Departments of Agriculture and Forestry and intend to use the committee's input to help shape policies and set priorities for TMDL work, especially that of the Implementation-Ready TMDLs. DEQ may also engage the committee on issues related to the temperature standard litigation. DEQ anticipates that the committee will meet quarterly for half-day meetings, starting in November.

Committee members include a diverse range of stakeholders including from municipalities, agriculture, forestry, environmental groups, EPA and NOAA. It also includes representatives from the Governor Kitzhaber's office, Oregon Departments of Agriculture, Forestry and Fish and Wildlife and Water Resources Department as well as representatives from the Board of Forestry, Board of Agriculture and Fish and Wildlife Commission. Commissioner Ed Armstrong will represent the Environmental Quality Commission on this committee.

2013–15 budget and legislative update

Since the August commission meeting, the state program funding teams have been preparing their budget recommendations for Governor Kitzhaber. DEQ has received a number of questions from the Healthy Environment Program Funding Team about existing DEQ programs and proposed policy option packages. The teams are expected to release their final recommendations in October.

Also, in September, the Oregon Legislature held committee meetings, which included two presentations from DEQ staff. DEQ participated along with the governor's office and several natural resource agencies in a presentation to Senate Committee on Natural Resources and the Environment on the implementation of the Clean Water Act in honor of the 40th anniversary of the legislation. DEQ staff also presented to the House Committee on Energy, Environment and Water regarding DEQ's proposed rules to require inspections of septic systems at time of

property transfer. Separately, the Emergency Board deferred action until its December meeting on a General Fund request related to tsunami debris that included a small amount of DEQ costs.

On the legislative front, DEQ has near-final drafts of the agency's legislative concepts. These drafts are preliminary, with final action needed from the Legislature in December. The four draft concepts include proposed revisions to remove the 2015 sunset from the existing Clean Fuels Program legislation; proposed revisions that could allow 30-year, instead of 20-year, loan terms for certain eligible projects seeking funding through DEQ's Clean Water State Revolving Loan Fund; proposed changes to a sewer improvements program that would allow DEQ to repurpose the funds as grant money for wastewater infrastructure improvements in eligible small communities in Oregon; and proposed removal of the 2014 sunset date for the paint product stewardship program, allowing DEQ to continue that pilot project for responsible return and disposal of certain paint products.

DEQ held a meeting in Salem with many of its stakeholders Oct. 23, 2012, to discuss the draft 2013 legislative concepts and 2013-15 Agency Request Budget. This discussion is a regular part of the agency's budget development process and pre-session legislative meetings.

Time of transfer requirement for residential septic systems

At the December EQC meeting, DEQ plans to bring forward a rulemaking package that proposes changes to septic system regulations. The proposed changes include a requirement that property owners submit septic system inspection reports to DEQ at the time of property transfer for properties in Oregon's designated coastal zone area, which includes all coastal counties and a portion of Lane County and all of Douglas, Jackson and Josephine Counties. This rulemaking is necessary for DEQ to comply with the Coastal Zone Management Act and is one of the commitments in the CZARA settlement agreement.

At the request of Representative Gilliam, and as noted in the legislative update above, DEQ gave a presentation on the proposed rulemaking to the House Energy, Environment and Water Committee on September 14. DEQ responded to questions from the committee about the details of the inspection requirements and questions about whether DEQ has the authority to impose this requirement. DEQ expects to have additional conversations with legislators regarding the rules.

The public comment period closed Friday, Oct. 19, and DEQ received many comments in support of the rule. Representative Gilliam, Representative Witt's staff office and the Oregon Association of Realtors comments raised concerns about the proposed rules. The final proposed rules will be presented in December for commission action, and will incorporate any changes necessary in response to public comment.

Proposed coal export facilities in Oregon

U.S. coal producers want to export coal from the Powder River Basin in Montana and Wyoming to Asian markets through existing and proposed Pacific Northwest marine terminals. Currently, there are three terminals in British Columbia exporting approximately five million tons of Powder River Basin coal yearly. In order to meet anticipated export tonnage goals and reduce transportation costs, five new terminals are being considered, two in Washington and three in Oregon.

Two projects, Port Westward and the North Spit, have not submitted applications to DEQ at this time. The Port Westward project is in Clatskanie, on land that belongs to the Port of St. Helens. Project plans include unloading five million tons of coal annually by 2017, growing to 21 million tons by 2022. The North Spit project is at the Port of Coos Bay, and envisions handling 10 million tons of coal yearly by 2022.

One proposed project has applied for DEQ permits. The Morrow Pacific project is located at the Port of Morrow near Boardman. Ambre Energy is the company working at this location, and the facility is the Coyote Island Terminal. The company has submitted applications for an Air Contaminant Discharge Permit and a Water Pollution Control Facilities permit. DEQ expects the company to submit an application for a construction stormwater permit once facility designs are final. The site may also need an industrial stormwater permit. If constructed, the Coyote Island Terminal is predicted to handle approximately 3.5 million tons of coal annually by 2017, growing to 8.8 million tons by 2022. Coal arriving by rail would be stockpiled in large storage sheds for reloading onto barges. Coal would be brought to the facility via rail, transferred to barges, shipped down the Columbia River to Port Westward near Clatskanie and loaded onto ocean-going vessels for export.

Coyote Island Terminal also applied to the U.S. Army Corps of Engineers for a permit to build the facility. The proposal includes over 15,000 square feet of new overwater structures. Based on the Corps' initial analysis, it determined that it will continue its analysis and documentation of the potential effects of permitting the project with an environmental assessment, pursuant to the National Environmental Policy Act. As the Corps considers direct, indirect and cumulative effects, it may determine that some of those effects are likely to have a significant impact on the environment, which would trigger the need to prepare an environmental impact statement.

In order to understand the impact of the Corps' environmental assessment on the state's permitting processes, DEQ delayed its planned public information meetings originally scheduled, but not announced, for October. These meetings will be rescheduled before the end of the 2012.

Air quality concerns in north Portland

Daimler Trucks has a truck painting facility located on Swan Island in Portland. Its air quality Title V permit is up for renewal and neighbors, mostly in the north Portland neighborhood on the bluffs overlooking Swan Island, have expressed concerns about the plant's emissions. Daimler hosted a meeting in late September to share the results of odor surveys it conducted over the summer months. Members of the community attended and Daimler indicated a willingness to continue sampling throughout the winter months, saying it would welcome input from the community about sampling protocols. DEQ will hold an information meeting Nov. 7 at the University of Portland. Once DEQ has accepted input from the public at the information meeting, a draft permit and public comment period will follow, with a hearing to be held after the first of the year. DEQ is committed to involving the neighbors in the permit development and public outreach process for this facility.

Astoria Marine Construction Co.

The Astoria Marine Construction Co. is a site in Astoria that requires significant environmental cleanup. The site was scheduled for Superfund listing, but the community was concerned about the proposed listing and worked with DEQ and others to successfully defer the oversight from EPA, as a Superfund site, to DEQ, as a state cleanup site. The cleanup of this site involves many state, local, federal and tribal government interests.

DEQ has recently executed multiple memoranda of understanding with participating tribes that will guide collaborative efforts to oversee cleanup of this site. The company is finalizing cost recovery agreements with several tribes, but has reached an impasse over potential costs with the Yakama Nation that intends to ask EPA to rescind the deferral agreement. A Community Advisory Group, which will review and provide additional input on the investigation and cleanup, has begun meeting. DEQ is committed to working out a successful solution for all governments and stakeholders involved with the site and process.

EPA reclaims oversight of Northwest Aluminum

Last month, DEQ issued a *No Further Action* determination for the Northwest Aluminum site in The Dalles following investigation, cleanup and the decommissioning of the plant that began in 2007. Aluminum was manufactured at the site from 1958 to 2003 by a succession of companies including Harvey Aluminum, Martin Marietta, which later merged with Lockheed to become Lockheed Martin, then Northwest Aluminum. The site overlaps the former Martin Marietta Superfund Site. While localized areas of contamination in soil and groundwater remain at the site, DEQ determined, based on current and likely future land use, that it does not exceed safe levels. Information is being prepared to inform future property owners of residual contamination and to specify limits on land and groundwater use. DEQ's *No Further Action* determination for the site is contingent on implementation of and adherence to these institutional controls.

EPA disagreed with DEQ's assessment of site cleanup and potential use of the aquifer as drinking water and intends to terminate its agreement with DEQ and effectively reclaim oversight of the location.

A *No Further Action* determination makes a property available for redevelopment. This property is zoned for heavy industrial use and is a potentially a significant economic development opportunity for The Dalles.

Although EPA also supports redevelopment of formerly contaminated properties, it does not agree with DEQ's conclusion about the future use of shallow groundwater on the site. DEQ found that the shallow groundwater would not be used as drinking water in the future, based upon low yield, the availability of deeper productive aquifers and a deed prohibition against using the shallow groundwater. EPA concluded that DEQ did not have sufficient information to make this determination.

Lockheed continues to maintain and monitor the portion of the former Superfund site not owned by Northwest Aluminum. EPA and DEQ continue to oversee this work.

South Deschutes/North Klamath County Groundwater Protection Project

The South Deschutes/North Klamath County Steering Committee has met for more than two years to consider solutions to the ongoing nitrate contamination of groundwater from septic wastewater disposal in southern Deschutes and northern Klamath counties.

In spring 2012, DEQ challenged the committee to develop draft recommendations by end of summer. Several months ago the committee added public work sessions to its monthly schedule to develop the recommendations. The committee presented draft recommendations during a recent work session that give a good indication of what the committee will present to DEQ. The committee also asked DEQ to explain how it will proceed if the recommended changes or actions are taken.

Draft recommendations include:

- **Deschutes County should develop a county-wide ordinance to limit the number of livestock per acre.**
 - Deschutes County has begun working on this recommendation. Klamath County already has a limit on livestock.
- **The Department of Land Conservation and Development should allow an exception to Goal 11** that prohibits providing sewers outside an Urban Growth Boundary should be granted for the area of concern for groundwater contamination. This exception would allow a range of wastewater treatment and disposal options within the area of concern.
 - The committee is still working on areas that should be included in the exception.

- DEQ, Deschutes County, Klamath County, DLCD and the committee discussed this at three meetings. DLCD provided a framework with the elements required for the exception. The Central Oregon Land Watch and Deschutes County Planning Commission member have also attended these meetings.
- **Increased regulation of likely sources of nitrates and other pollutants in the affected area.** These sources include golf courses, land application of wastewater and nurseries.
- **Develop a means of governance for the area, including a sanitary authority or multiple sanitary districts.**
 - These would provide the basis for setting standards and requiring participation in cluster systems, sewer extensions and other solutions. Establishing districts could make various forms of funding available for planning and construction.
- **Monitor groundwater, including requiring additional monitoring before any action is taken that requires residents to spend money on new solutions.**
 - At present, DEQ believes a minority on the committee would favor this type of delay.
- **Allow a broad range of options to manage wastewater** including “green solutions” such as composting toilets, urine separation and so-called living machines for septic system management.

DEQ is pleased with the progress of the committee and expects to receive formal recommendations this year. Work continues on the Goal 11 Exception and DEQ will have a role in writing findings that justify the exception based on a growing human health problem. DEQ staff are discussing appropriate responses to each of the recommendations and determining what additional actions staff may take. DEQ and the committee agree that significant public outreach will be necessary for the implementation of any recommendations.

DEQ's Clean Water State Revolving Fund Program Intended Use Plan

On Aug. 27, DEQ's Clean Water State Revolving Fund program finalized the Intended Use Plan for state fiscal year 2013. DEQ develops a plan each state fiscal year that describes how DEQ proposes to use the Clean Water State Revolving Fund and includes the projects it anticipates funding. The plan also includes information on federal capitalization grant requirements, project applications received, project priority ranking, loan funds available and public involvement information. DEQ updates the plan at least twice a year to include any new project applications.

DEQ's Clean Water State Revolving Fund program has an "open" application process that allows applicants to submit applications any time throughout the year. Staff review and score applications at least every four months and update the plan with eligible projects. DEQ's regional project officers and technical assistance staff work with interested communities that want to apply.

The Clean Water State Revolving Fund program projected about \$126.6 million available in state fiscal year 2013. This amount includes the federal fiscal year 2012 capitalization grant DEQ received on July 3, 2012, from EPA for about \$16 million. EPA requires DEQ to use ten percent, about \$1.6 million of the grant to fund projects under the green project reserve and use a portion of the grant to provide additional subsidization. DEQ uses principal forgiveness as the form of subsidization and in this fiscal year will provide about \$900,000 in principal forgiveness. Currently about \$64 million remains available to projects that complete all application requirements and are ready to proceed.