


State of Oregon
Department of Environmental Quality

Memorandum

Date: April 15, 2011
To: Environmental Quality Commission
From: Dick Pedersen, Director 
Subject: Agenda item G, Informational item: Director's dialogue
April 21-22, 2011, EQC meeting

Industrial Stormwater Advisory Committee process

DEQ is revising two industrial stormwater general permits. The 1200-Z permit applies to facilities throughout the state and the 1200-COLS permit applies to facilities specifically within the Columbia Slough watershed. Approximately 900 facilities operate under these two permits. DEQ is revising these permits due to legal settlements requiring the updates and a multi-sector general permit issued by EPA that addressed many of the issues raised by the litigation.

DEQ convened an Industrial Stormwater Advisory Committee made up of diverse members from stormwater consulting firms, environmental advocacy groups, permit holders and municipalities. Since June 2009, DEQ has met with the committee 16 times to seek input on the proposed changes to the permits. The committee's leadership and expertise was invaluable in tackling the challenging issues of regulating industrial stormwater under general permits. Vice-chair Williamson chaired the committee.

A public notice and comment period on the proposed permits begins the first week of May, and DEQ will hold public hearings in Portland, Eugene, Medford and Bend during the first and second week of June. DEQ intends to issue these permits by department order by Aug. 31, 2011.

Oregon's 2010 Integrated Report on Water Quality

The federal Clean Water Act requires DEQ to assess the quality of Oregon's waters and report the findings every two years. The Integrated Report combines reporting for the Clean Water Act Section 305(b), which requires states to assess all waters, and Section 303(d), which requires states to list surface waters that do not meet water quality standards. The 303(d) list identifies the water quality limited waters in Oregon where water quality management plans, known as TMDLs, are needed to reduce pollutant levels. DEQ uses Oregon's 303(d) list to focus efforts by the agency, other state agencies and the public to improve water quality.

DEQ prepared and submitted the first phase of Oregon's 2010 Integrated to EPA this January and is taking public comments on the final supplement during April and May. DEQ will submit the final 2010 Section 303(d) list to EPA for review and approval in May 2011.

The 2010 Integrated Report will contain new assessments based on new data and information including:

- Information from Oregon's coastal Beach Monitoring Program, including sampling data for Enterococci bacteria and beach advisories.
- Health advisories about toxic algae blooms or where aquatic weeds have been identified as problems.
- Other advisories warning against consuming fish from certain waters.
- Instances of Public Drinking Water System closures due to turbidity in surface waters.
- Biological data about freshwater macro invertebrate communities (water bugs) indicating the general quality of water for all aquatic life.
- Removing or de-listing water segments from the 303(d) list where EPA has approved DEQ's completed TMDLs. This includes over 900 water segments in major river basins and watersheds including:
 - John Day, Malheur, Rogue, Umpqua, and Willamette River Basins; and
 - Bear Creek, Lobster Creek, Lower Grande Ronde, Miles Creeks, Molalla-Pudding, Tenmile Lakes, and Willow Creek subbasins and watersheds.

DEQ expects EPA to take action on Oregon's 2010 303d list approximately 30 days after DEQ submits the final list in May 2011. EPA could partially approve or partially disapprove of the 303(d) list. If EPA disapproves any part of the list, federal rules require EPA to produce a draft list for public comment identifying waters to be included in the 303(d) list.

Update for human health toxics criteria rulemaking

The public comment period for the human health toxics rulemaking closed March 21, 2011. DEQ held nine public hearings in Bend, Eugene, Medford, Coos Bay, Ontario, Pendleton, Salem and Portland, including an additional hearing held before the commission in Portland at the February EQC meeting. Over the last couple of months, DEQ has also discussed this rulemaking with legislators and participated in legislative hearings. As of mid-March, three bills related to the rulemaking, and specifically to the variance provisions and process, have been introduced. DEQ is working with the bills' supporters on amendment language that would support both the program's work and the intent of the bills.

The proposed rulemaking, while revising the human health toxics criteria in water quality standards based on a fish consumption rate of 175 grams per day, also includes revisions such as

intake credits, a background pollutant allowance, a revised variance rule and changes related to nonpoint source pollution in Division 41 and 42 rules.

DEQ has received approximately 1180 comments on this rulemaking. Some of the comments included both questions about and support for DEQ's use of the scientific information related to the 175 grams per day fish consumption rate. Many landowners expressed the concern that DEQ is reaching beyond its statutory authorities and that the current relationships among the Department of Agriculture, Department of Forestry and landowners work well and should not change. As variances may be the primary compliance tool for municipalities, there is concern from the cities about how the variance process will be administered and question whether variances are a viable or appropriate tool for resolving water quality objectives.

DEQ anticipates bringing this rulemaking to the commission in June for action along with draft Internal Management Directives for variances and implementing TMDLs under the new standards.

Senate Bill 737 program update

DEQ has completed the second round of sampling for the 52 largest wastewater treatment facilities, as directed by the 2007 Oregon legislature in Senate Bill 737. The final data from the sampling was sent to the municipalities April 13, and DEQ will be hosting a webinar April 26 to review the data with the 52 facilities and answer questions from the group. As the commissioners may recall, DEQ held a webinar after the first round of sampling, and was able to share information and discuss the data with the municipalities in a coordinated and straightforward way. As DEQ noted during the last commission meeting, five of the 52 municipalities must develop Persistent Pollutant Reduction Plans because a persistent pollutant was detected in their effluent.

The data from the second, and final, round of sampling does show some general trends and DEQ staff from the lab and in water quality, are in the process of analyzing the hundreds of data points to create a comprehensive report on the results. This report will be available in late May, and will explain what the data shows and what it means to the municipalities and all Oregonians. This program is an opportunity for DEQ to identify pollutant reduction activities for individuals, industries and communities, and has been successful because of the hard work of the DEQ staff involved throughout the process and the municipalities and partners for ensuring the effluent sampling was done effectively and in close coordination with DEQ's lab.

New report on air toxics risk

On March 11, EPA released its latest National Scale Air Toxics Assessment, also called NATA. Key findings indicate that while Oregon has reduced air toxics, notably benzene, the state needs more reductions to protect public health. The report shows that air toxics are a problem

statewide, but that the risk is higher in the densely populated Portland region. Overall, EPA estimates that 17 air toxics are above health-based benchmarks in Oregon. The pollutants with the most potential to cause serious health effects are formaldehyde, benzene, acetaldehyde, acrolein, diesel exhaust and polycyclic aromatic hydrocarbons, also called PAHs. Sources of air toxics include transportation, home heating with wood, industrial processes and a wide variety of chemicals used by businesses and people. DEQ is currently leading the Portland Air Toxics Solutions Advisory Committee, made up of local citizens and stakeholders, to study and make recommendations for an air toxics reduction plan for the Portland region over the next ten years. DEQ will be using the same geographic approach to air toxics reduction across the state as the program continues.

PGE Boardman

On March 16, EPA proposed a National Emission Standard for Hazardous Air Pollutants for coal fired power plants, which would apply to the PGE plant in Boardman. The NESHAP is scheduled for 2012 adoption, with compliance due in 2015-2016. The proposed NESHAP limits mercury, acid gases and hazardous metals, requirements that overlap with rules the commission has already adopted. By complying with Oregon's mercury limit in 2011, the Boardman plant should be able to meet the NESHAP limits for mercury. It is less clear whether complying with Oregon's SO₂ limits in 2014 will enable compliance with the NESHAP's limits for acid gases and metals. While the NESHAP limit for SO₂ is more stringent than Oregon's limit, the NESHAP provides an alternative limit for hydrochloric acid. PGE believes the plant will be able to meet the hydrochloric acid limit with low-sulfur coal and emission control equipment designed to meet Oregon's SO₂ limit under the regional haze rules. PGE is less certain if existing control equipment will enable the plant to meet the hazardous metal limit or the alternative particulate limit. However, the company believes that EPA may allow for alternative compliance options given the enforceable requirement of early closure of the plant.

Blue Heron

In March, the Blue Heron Paper Company ceased operations and is in bankruptcy proceedings. DEQ's interest is to ensure the court and all involved parties are aware of the key environmental responsibilities tied to the site. It appears all parties are aware of the environmental concerns, most importantly the need to maintain the wastewater treatment system through the bankruptcy process as well as the environmental concerns associated with dismantling the facility. All DEQ Northwest Region programs involved with the plant and company are in close communication and coordination.

Local septic system contract expected to reduce costs and fees

When DEQ proposed to increase its application fees for onsite septic system permits in 2009, Lake and Harney Counties proposed administering the septic system program locally. County officials were concerned that the fee increases would discourage development, encourage non-

compliance and promote hostility towards the onsite program. They said they could hold down application fees in their counties by running the program with county employees rather than DEQ staff. The counties' proposal expected to save money in part by eliminating the travel time and expenses incurred when DEQ staff traveled from Bend to sites in Lake and Harney Counties.

DEQ reviewed the proposal, and in January 2010, contract negotiations began between DEQ and the counties. During the negotiations, the counties agreed that Lake County would contract with DEQ and provide services to both Lake and Harney County. This arrangement increases efficiency by keeping the program local while ensuring the counties do not duplicate services. DEQ finalized a Memorandum of Agreement detailing the agreement with Lake County in March 2011 and distributed the document for formal county approval in early April.

The new arrangement begins May 2, 2011, at which time customers will be able to obtain septic system applications and records at their local building departments. Currently 22 other counties administer the state onsite program under contract with DEQ. Program policies and rules are developed by DEQ, and the county-administered programs remain under DEQ oversight.

Tillamook Bay bacteria

The Tillamook Bay watershed has had elevated levels of bacteria in both the freshwater system as well as the estuary for many years. Oregon Department of Agriculture's sampling has been documenting acceptable levels of bacteria in Tillamook Bay until recently. Within the last six months, ODA has been finding elevated levels of bacteria in the bay. Continued elevated sample results would require ODA to close the Tillamook Bay to all shellfish harvesting indefinitely.

To prevent closures, ODA initiated an intensive sampling effort to attempt to determine the source of these recent high bacteria level recorded in the Bay. A stormwater outfall from the City of Tillamook was included in this ODA effort as well as other sites in the major rivers and sloughs. The stormwater outfall pipe is in an area of known cross-connections between sanitary and storm sewers and bacteria levels are high. However, it is unclear whether bacteria loads from the outfall are large enough to be measured in Tillamook Bay, especially given the fact that the cross-connections have been present for many years and the ODA monitoring results for Tillamook Bay appear to have worsened only recently.

After initial discussions with ODA staff, DEQ and ODA have established a weekly conference call to monitor developments. DEQ inspected the wastewater treatment plants in Tillamook and Bay City and developed a plan to address the sanitary sewer cross connections in Tillamook. Water quality monitoring will continue in the coming weeks, with ODA and DEQ coordinating efforts.

Gasification pilot at Columbia Ridge Landfill

DEQ issued a Solid Waste Treatment permit to Waste Management and S4 Columbia Ridge Recovery, LLC in early April to treat municipal solid waste at a facility to be located at the existing Waste Management Columbia Ridge Landfill and Recycling Center in Arlington, Oregon. The treatment facility will use a plasma gasification/vitrification processes to change municipal solid waste into synthesis gas, while the remaining, mostly inorganic, fraction is converted to compact solids in the form of vitrified obsidian-like glass and a metal alloy. This is a pilot project that will only process 25 tons of municipal solid waste a day. The purpose of this project is to determine the quality of the synthesis gas that is created and its possible uses. The gas created will be characterized and then sent to the landfill gas flare to be destroyed.

DEQ released the draft permit for public notice and comment in July 2010. Many environmental groups opposed municipal solid waste incinerators and submitted comments regarding air quality that required additional research by staff. The main issue focused on definition of incineration and if this facility was considered an incinerator. DEQ determined that the facility was not an incinerator because the gas is sent to a pollution control device - the flare - instead of being burned in a boiler or electric generator, which would define the gasifier as an incinerator and require related regulation.

Derelict vessels, *Davy Crockett* update

A "Unified Command" of the US Coast Guard, Washington Department of Ecology and DEQ is now 84 days into the response to the derelict vessel, Davy Crockett, and making progress in completing the cleanup. As you will recall, the ship partly sunk on the north shore of the Columbia River, apparently as a result of attempts to salvage metal from the deck structure of the vessel which "broke the back" of the ship, tearing the vessel in mid-ship. A coffer dam has been constructed to surround the vessel with sheet metal and a membrane to confine potential releases of oil and other hazardous materials. The vessel sections will be refloated and then cut into sections that can be lifted by crane onto a barge for recycling and disposal. Oily water and other hazardous materials are segregated and managed. After the vessel is removed, the Unified Command will sample sediments within the coffer dam area to determine if any of sediments need to be removed.

Responding to this incident has been expensive and resource intensive. More than 70 individuals are involved in the response on any given day and, so far, \$10 million has been spent on the cleanup. The work is being paid for with federal funds from the Oil Spill Liability Trust Fund.

Governor Kitzhaber has asked the unified command to research whether other vessels present similar threats to our environment. We've identified about 10 other large vessels we intend to monitor closely in conjunction with the USCG and our other state and federal partners.

DEQ recently briefed the governors of Oregon and Washington on the Davy Crockett and other large vessels with a potential to present similar problems. Our goal is prevention and we are pleased to have the support and engagement of our governors.

Governors Kitzhaber and Gregoire have directed their respective state agencies to convene a task force of state and federal agencies to develop a long-term plan for addressing the highest priority risks from abandoned vessels along the Columbia River. They've specifically asked that the task force consider recommendations for changes in current state and/or federal authorities, programs or funding authorizations as needed to adequately address these risks. The governors suggested that the task force convene a workshop to solicit input and information from a broader audience and asked for a report to the Governors within 6 months

Governors Kitzhaber and Gregoire will host a joint media event to call for action to address abandoned and derelict vessels along the Columbia River. They are also supporting the USCG's efforts to elevate the issue of abandoned and derelict vessels to the National Response Team and national USCG Commandant, and they are likely to ask our federal delegations to help if needed.

West Hayden Island beneficial use determination

Since DEQ's decision in February to reconsider the beneficial use determination sediment placement from Post Office Bar in the Willamette River on West Hayden Island, DEQ has reached out to the West Hayden Island community, attending one meeting hosted by the community March 3. DEQ opened a public comment period in early March. DEQ convened a panel discussion with City of Portland, Port of Portland, U.S. Fish and Wildlife and U.S. Army Corps of Engineer representatives was March 29, held a public hearing April 12 and will accept comments until April 18 on the proposal.

Milton-Freewater levee

The community of Milton-Freewater is faced with newly required flood insurance premiums due to structural problems with its levee along the Walla Walla River. The U.S. Army Corps of Engineers is implementing structural repairs to the levee with the Milton-Freewater Water Control District as the contracting agent. The district's contractor, Anderson-Perry, plans to work with DEQ on 401 certification in relation to the remove-and-fill permitting. The Corps is requiring substantial large woody vegetation removal to re-certify the levee under its Levee Rehabilitation and Inspection Program. The removal of this material would be counter to site management provisions in DEQ's temperature TMDL for this area. The Corps' recertification would allow homeowners to not be required to buy FEMA flood protection and would provide insurance for any future levee repairs. There is disagreement among Fish and Wildlife, the Corps and National Fish Marine Wildlife about the benefits of removing the vegetation, and Senator Wyden wrote a letter encouraging the agencies to work together on a recertification plan that protects homeowners and wildlife.

Klamath and Lost River TMDL petition

In December 2010, DEQ issued a water quality improvement plan known as a Total Maximum Daily Load, or TMDL, for the Upper Klamath and Lost River Subbasins. The TMDLs were developed in coordination with California and EPA Regions 9 and 10 to provide a comprehensive pollutant budget for the Klamath basin from the outlet of Upper Klamath Lake to the Pacific Ocean. The federal Clean Water Act requires DEQ to develop plans with goals and pollution control targets that ensure that the streams are healthy for fish and wildlife, and safe for fishing and swimming. The principal issues were low dissolved oxygen caused by excessive nutrients and oxygen-depleting substances, and high temperatures in some areas that cause challenging conditions for migrating and resident fish.

On Feb. 18, 2011, a group of local governments, private industries and irrigation districts formally petitioned DEQ for reconsideration of the TMDL. The petitioners questioned DEQ's authority to place limits on irrigation districts, and alleged flawed scientific applications, inappropriate limits on in-stream log storage and inaccurate consideration of the costs of implementation. DEQ acknowledged receipt of the petition in February, and stated that the agency would reply with a full response granting or denying the petition. In early April, DEQ granted the petition for reconsideration and is currently developing its timeline and process for reconsideration. DEQ does not know if the reconsideration will result in substantive changes to the TMDL, but is committed to a fair consideration of the issues raised by the petitioners. There is no statutory time limit for this process, but DEQ intends to complete it as quickly as possible. The TMDL and management plan remain in effect, and DEQ does expect them to be implemented unless directed otherwise by a court order. DEQ will meet with the petitioners to discuss their specific concerns and begin review of the TMDL and water quality management plan this spring.

TMDL development and implementation has been controversial in the Klamath Basin. Development of these plans remains an important component of the states' planning process and DEQ believes that the plans provide important guidance for restoring and improving water quality.

Union-Baker-Wallowa household hazardous waste collection programs opened March 21

A state-of-the-art household hazardous waste disposal facility, owned by Union County and operated by City Garbage Service at the Waste Pro Transfer Station in La Grande, officially opened for business March 21. Two satellite operations located at the Ant Flat Landfill in Enterprise and the Baker Sanitary Recycling Depot in Baker City began collecting household hazardous waste. The satellite facilities have yet to be fully constructed so the initial collection activities will be simple but conducted safely and in a DEQ-approved manner. It has taken Union, Baker and Wallowa Counties seven years of planning, multi-agency coordination,

securing funding, hiring contractors, training operators and constructing facilities to get to this point but now residents from these three counties have a way to safely dispose of their household hazardous waste. Oregon, through DEQ, provided \$237,000 in grant money for planning, coordination and construction of these facilities. The total estimated cost for the project was roughly \$450,000. The program operations will be funded through a \$3.17 per ton surcharge on trash disposal, and the surcharge has been approved by all three county commissions and city councils. The total estimated operating revenues from the surcharge is \$100,000 per year, which the program expects to be sufficient to run operations.

EPA funding cuts to affect state and tribal grant programs

The recent spending bill passed by Congress included \$1.6 billion in cuts to U.S. EPA's budget. Much of that cut, approximately \$1.19 billion, would come from State and Tribal Assistance Grants, which mainly fund water infrastructure upgrades and state plans to comply with new federal rules. That includes a \$997 million cut from a pair of revolving funds that finance local drinking water projects and efforts to clean up polluted bodies of water. The spending bill also rejected a request for an extra \$82 million in grants to help states implement new air pollution rules from EPA. The legislation would cut roughly \$23 million from the Superfund budget, reducing it from \$1.31 billion to \$1.28 billion for the remainder of the fiscal year. Prior drafts of the spending bill included provisions that would suspend certain EPA activities, such as greenhouse gas regulations, but those provisions were removed from the final bill.

These cuts will affect DEQ's Air, Land and Water Quality Divisions' ability to distribute grant money to local communities because of the reductions in funding to EPA that is provided to states through grant programs. DEQ does not yet have an analysis of the affects from the cuts, but does expect that some grant or loan programs may be disrupted or limited in their ability to provide money to communities across Oregon for wastewater treatment plant upgrades, technical assistance and hazardous waste cleanup.