

Date: June 8, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item L, Informational item: Director's dialogue
June 16-17, 2010 EQC meeting

Construction stormwater 1200C general permit update

DEQ is in the process of reissuing the construction stormwater 1200C general permit because the current permit expires Dec. 31, 2010. A vital element of the renewal will be compliance with 40 CFR 450, "Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category," which became effective Feb. 1, 2009. This rule includes sampling requirements and effluent limits for construction sites that are greater than 10 acres, which is significant because this is the first time that effluent limits have been applied to construction activities. In addition, DEQ will be clarifying the requirements for small lots that are part of a larger project, referred to as a "Common Plan of Development." Regulation of small lots has the potential to add substantial work for DEQ and increase the compliance burden on developers and builders. DEQ is working to find efficient ways to provide adequate environmental protection for small construction sites. Because construction activities are regulated through both the 1200C permit and local ordinances, DEQ is working with EPA to reduce duplication of efforts, particularly for small construction sites. DEQ plans to issue public notice on the proposed permit in August, with public hearings in September, and plans to issue the final permit by department order in December.

BP/Horizon deepwater spill

In addition to the direct impacts of the spill on the Gulf Coast region, the spill also indirectly impacts the Pacific Northwest region. These impacts and potential impacts to Oregon, DEQ and the region include:

- Many states, including Oregon, belong to the Emergency Management Assistance Compact, an inter-state compact designed to provide mutual aide in the case of national emergencies. Through EMAC, a disaster-impacted state can request and receive assistance from other member states quickly and efficiently. An initial request for potential deployment of Oregon DEQ staff for response to the Gulf Coast response actions has been received. At least 14 qualified DEQ staff have expressed a willingness to support the Gulf Coast response actions if requested. DEQ staff have not yet been asked to assist, but staff and the agency are prepared to respond if requested. It speaks

well of our DEQ staff that we have so many qualified and willing volunteers and I thank them for their commitment and willingness to serve if needed.

- The spill is of national, and international, significance, and equipment and resources are being requested from around the world, including the Pacific Northwest. All fire boom located on the West Coast has been deployed and all stockpiles of chemical dispersants located in the West Coast have been deployed. In the event of a major spill in the Pacific Northwest, in-situ burning would be a potential response but DEQ and other response agencies would probably not be able to consider this alternative for the foreseeable future. It will likely be six months or more before fire booms and dispersant stockpiles are replenished given manufacturing times and the needs of the Gulf Coast region.
- In addition to equipment deployed to the Gulf Coast, key personnel from the private sector and public agencies are serving along Gulf Coast in a variety of positions. Many of these staff people, including 38 people from the Portland area with the U.S. Coast Guard, are working on the spill. In the event of a major spill in the Pacific Northwest, many of the most experienced and qualified response personnel would not be available.

The Washington Department of Ecology is maintaining an inventory for personnel and resources from the Pacific Northwest at:

http://www.ecy.wa.gov/programs/spills/Special_Focus/BP_LA_Oilspill/resource_list.html

DEQ is working closely with the U.S. Coast Guard, EPA, Washington Department of Ecology and area oil spill response contractors to monitor the Gulf Coast response. DEQ recognizes the need to provide help to minimize the environmental damage of the spill and clean up oil, and also to maintain a minimum level of equipment and personnel to ensure that Oregon and the Pacific Northwest states are able to respond to a major spill.

Oregon closes case on long-term environmental violations in Hermiston

Hermiston resident David P. Shepherd, who formerly operated the now-closed Best Cleaners in Hermiston, recently pled no contest in Umatilla County court to misdemeanor criminal charges of failing to file annual dry cleaner reports with the state of Oregon. Shepherd received 18 months probation and more than \$2,000 in fines.

Shepherd had a long record of failing to comply with environmental laws for operating his dry cleaning business. Shepherd also failed to comply with state waste minimization requirements and failed to pay state dry cleaner fees, which are used to help Oregon clean up contaminated dry cleaning sites around the state. In May 2008, DEQ issued Shepherd a compliance order and \$15,420 in civil penalties for a series of violations.

After Shepherd failed to appeal or pay the penalty or otherwise respond, officials from DEQ's dry cleaning, hazardous waste and air quality programs inspected the property in the fall of 2008.

DEQ then issued Shepherd a Pre-Enforcement Notice for failing to comply with the previous order and for additional violations found on the property. DEQ referred the case to the Oregon State Police in the spring of 2009. That fall, Oregon State Police issued Shepherd two misdemeanor citations, for failing to submit his annual reports for 2007 and 2008. Each citation carried a possible maximum fine of \$10,000.

DEQ's dry cleaner and environmental cleanup programs have been working with the site's property owner to join the state's Voluntary Cleanup Program to address contamination at the site. The property owner has not been cited in this case and has been fully cooperating with the state. DEQ has not yet established the full extent of contamination at the site, but site assessments of the property in 1999 and 2004 confirmed that groundwater at the property was contaminated with perchloroethylene. According to DEQ, the property has been the scene of various dry cleaning operations for several decades until Best Cleaners closed Sept. 20, 2009.

Last fall, Shepherd was evicted from the property and the property owner paid for the remaining chemicals and waste on the property to be properly disposed of.

Suction dredge mining permit 700 PM update

On April 22, DEQ began the public comment period on a proposed renewal of the 700PM general permit for suction dredge mining. This permit renewal is needed because the current permit expires on June 30, 2010 and the Oregon Circuit Court of Appeals determined that the current permit is not clear about whether it regulates water pollution or dredge material. The Oregon Circuit Court of Appeals decision has been appealed to the Oregon Supreme Court. DEQ's goals for renewing this permit are to clarify the water quality related requirements and create consistency with the Department of State Lands regulation of this activity. DEQ plans to issue this general permit by department order.

DEQ held three public hearings on the proposed permit: May 27 in Medford attended by 74 people, June 1 in Portland attended by 14 people and June 3 in Pendleton attended by seven people. During these hearings, DEQ has heard very similar concerns. In summary, many miners have concerns about the proposed requirement to monitor the length of the turbidity plume. Miners have commented that they frequently work alone and this monitoring requirement does not make sense where they are working alone because by the time they get out of the water to observe the plume, the plume no longer exists. Similarly, there are concerns about including non-motorized mining equipment in the permit and whether the permit accurately has incorporated the Department of State Lands requirements. DEQ has received comments from numerous environmental organizations requesting more stringent provisions in the permit, including an annual reporting requirement. Several mining associations and organizations have requested that DEQ issue a temporary permit and delay issuing the final permit pending the Oregon Supreme Court decision. DEQ is currently reviewing and responding to public comments.

City of Astoria combined sewer overflows

The City of Astoria, like Corvallis and Portland, has a sewage collection system that combines sanitary sewer flow with stormwater inflow and infiltration. When Astoria's system is inundated with significant amounts of rainwater, the excess is diverted to the Columbia River and Young's Bay through a series of Combined Sewer Overflows.

In 1993, Astoria and DEQ entered into a Stipulation and Final Order that required the city to carry out necessary studies, planning, and corrective actions to eliminate discharges from Combined Sewer Overflows that violate applicable water quality standards up to a five-year return winter storm and a ten-year return summer storm. That level of control would reduce Astoria's then-current volume of discharges by approximately 98 percent.

The order contained a provision that it could be reexamined and amended with respect to alternative levels of Combined Sewer Overflows reduction based on new information and understanding gained during the facility planning process. In 1998, Astoria submitted a Combined Sewer Overflows Facilities Plan to DEQ pursuant to the terms of the order. An alternative identified in the plan would reduce Astoria's CSO discharges by approximately 96 percent at a substantial cost savings over the order. The City of Astoria is updating the 1998 plan, and will submit it to DEQ in June 2010. Astoria has taken substantial steps forward in compliance with the current order, and consideration of an amendment now is timely so that Astoria can complete long-term Combined Sewer Overflows planning and implementation.

Air toxics benchmarks

DEQ extended the comment period for proposed revisions to the air toxics benchmarks until June 30. DEQ provided an opportunity for comment on the proposal during the last commission meeting and held an additional public hearing on May 18 with EQC Vice-chair Ken Williamson serving as hearings officer.

The proposed revisions would add a new air toxic ambient benchmark concentration for ethyl benzene, make current benchmark concentrations for lead and manganese more protective and clarify that the mercury benchmark applies only to elemental mercury. Among other things, commenters raised questions about the membership of the Air Toxics Science Advisory Committee and requested that DEQ consider short-term benchmarks in addition to the existing benchmarks for long-term exposures. DEQ now expects to present the benchmark revisions for consideration by the EQC in August.

Hells Canyon 401 certification

401 water quality certification is required for the relicensing of the hydropower project in Hell's Canyon which is operated by Idaho Power Corp. Oregon DEQ recently determined there was an

analytical flaw in the justification Idaho Power used to demonstrate upstream restoration of riparian areas and flow augmentation. Oregon DEQ has determined that the flow augmentation is not capable of meeting water quality standards alone for the area below the dam, and will likely require an engineered solution, meaning a controlled release of cool water, as well. Oregon DEQ continues to work the Oregon and Idaho governors' offices and Idaho DEQ on this project.

Magnesium chloride in solid waste landfills

Magnesium chloride, a manufacturing byproduct waste, from ATI Albany Operations and ATI Wah Chang has been delivered in the past to the Wasco County Landfill, Finley Buttes Landfill, the Columbia Ridge Landfill and the Chemical Waste Management hazardous waste landfill. At the time it was delivered to these facilities, it was characterized as a solid waste and was allowed to go to these facilities. EPA recently completed extensive analysis of this waste stream and determined it was a reactive hazardous waste and a danger to human health and the environment. Magnesium chloride waste can release excessive amounts of heat, flammable and potentially explosive hydrogen gas, and flammable and toxic hydrogen sulfide gas after contact with moisture when placed untreated in a landfill environment.

DEQ has concerns regarding the long-term care, maintenance and operation of these landfills because of the nature of this waste. In order to address these concerns, DEQ sent warning letters to the landfills telling them that the waste has been determined to be hazardous and requiring them to take specific steps to assess and remediate any potential hazards associated with this hazardous waste.

Proposed Bradwood Landing LNG project

In early May 2010, Northern Star, the developing the Bradwood Landing proposed liquefied natural gas project near Astoria, declared bankruptcy. DEQ was contacted shortly thereafter by the bankruptcy trustee to ask for a formal stay on all permits pending while Northern Star finds a purchaser. DEQ responded and ask that the formal request for a stay be put in writing. To date, DEQ has not received any correspondence.

EQC retreat update

DEQ's retreat planning team met earlier this month to discuss issues and themes for commission discussion at the November EQC retreat. Based on prior conversations, the team members are working with a tentative retreat timeline of mid-November. The team is developing informational items and updates for the August and October commission meetings to prepare commissioners for the retreat. Tom Roick and Keith Johnson presented to northwest region staff earlier this month about the process, and staff received information about the process through DEQ's internal employee newsletter. The team will continue to meet over the summer and fall, with Chair Blosser and Vice-chair Williamson continuing to serve as the commission's liaisons through the process.

Pesticide general permit

As of June 4, EPA's pesticide general permit is out for public comment. A final permit is expected by December 2010, and the regulated community is required to be covered under the permit by April 9, 2011. EPA originally promulgated rules that said no water quality permit was required where application occurred consistent with labeling under the Federal Insecticide Rodenticide Act. These rules were overturned by the Sixth Circuit Court of Appeals and EPA has until April 2011 to issue a permit.

Currently, if a pesticide product is applied consistent with labeling, no NPDES permit is required. States authorized under the NPDES program must develop their own permits. DEQ and the Oregon Department of Agriculture are working together, and were part of an EPA workgroup providing information and feedback on EPA's initial drafts of the permit. DEQ plans to use EPA's drafted permit as the basis for a pesticide general permit used in Oregon. Oregon's pesticide general permit must meet all Clean Water Act requirements that the federally issued permit must meet, and must meet Oregon's water quality standards.

DEQ is considering the following types of pesticide applications for coverage:

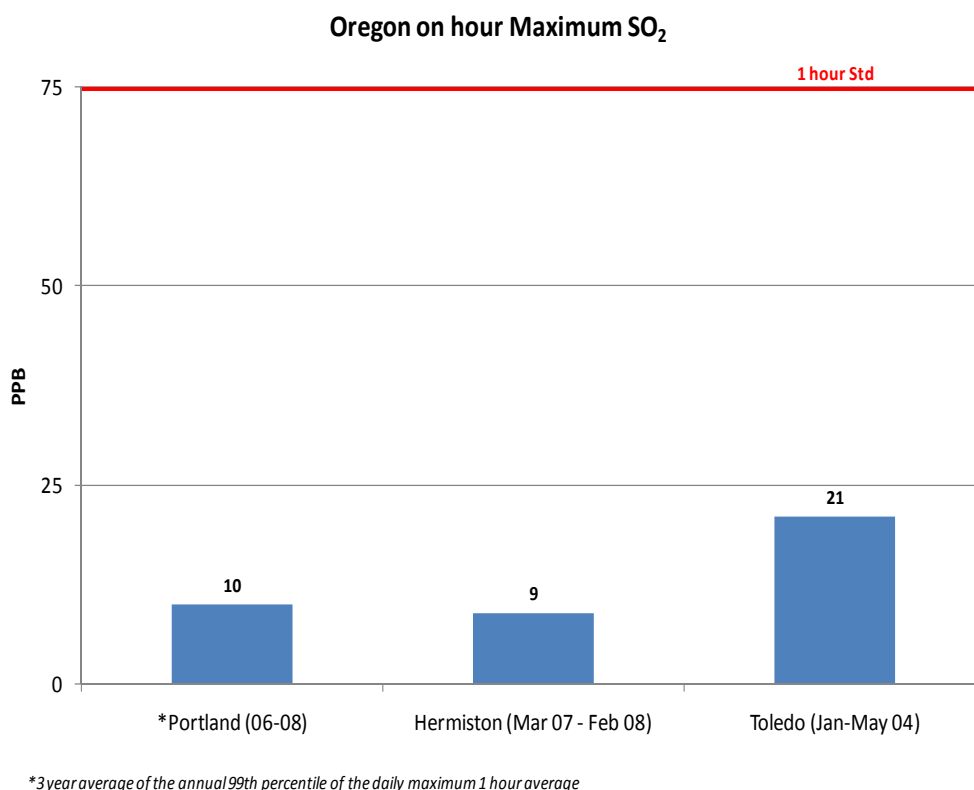
- Mosquito and other flying insect pest control. To control public health nuisance pests which develop during a portion of their life in water.
- Aquatic weed control. To control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches or irrigation canals.
- Aquatic nuisance animal control. To control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to, fish, lampreys, and mollusks.
- Forest canopy pest control. Aerial application of a pesticide over a forest canopy to control the population of a pest species. A portion of pesticides applied in this manner will unavoidably be applied over, and deposit to, water.

DEQ is developing a proposed permit for public comment in late fall 2010, and plans to issue the pesticide general permit in early 2011. DEQ will work with the Department of Agriculture pesticides program in developing a permit and continue to conduct outreach to the agricultural community, pesticide applicators, environmental groups and special districts.

New federal sulfur dioxide standard

EPA adopted a new air-quality standard for sulfur dioxide in early June, and Oregon is well within the new limits designed to be more protective of public health.

The new standard requires states to determine sulfur dioxide levels based on hourly readings. The new, one-hour standard of 75 parts per billion is designed to protect against short-term exposure ranging from five minutes to 24 hours. The most common source of sulfur dioxide in Oregon is fossil fuel combustion, and EPA will require DEQ to install a new monitor in the Portland/Vancouver metropolitan area at the maximum concentration location. DEQ is still researching any additional requirements to place a second monitor elsewhere in the state. The chart below shows sulfur dioxide levels in Oregon, with all locations well below the new one-hour standard of 75 parts per billion.



Paint product stewardship

As you may recall, House Bill 3037, passed in 2009, required the establishment of a statewide paint product stewardship pilot program in Oregon beginning no later than July 1, 2010. PaintCare, a non-profit corporation, was formed to operate the program representing architectural paint manufacturers selling in Oregon and will serve as the stewardship organization. DEQ's primary role in the program is to review and approve the required stewardship plan and assessment rate. The plan has been reviewed internally by DEQ staff and is available for public feedback until June 15. DEQ anticipates that the plan will be approved in late June and the program will begin July 1.