


State of Oregon
Department of Environmental Quality

Memorandum

Date: October 18, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director 

Subject: Agenda item W, Informational item: Director's dialogue
October 20-22, 2010, EQC meeting

Senate Bill 737

As part of implementing Senate Bill 737, Oregon's 52 largest municipal wastewater treatment plants must screen their effluent twice for pollutants on DEQ's Priority Persistent Pollutant List Municipalities. The results will be compared to the results from these sampling events against the plan initiation levels adopted into rule at the June EQC meeting. Municipalities collected the first set of samples in July and August. This statewide effort went extremely well due to the good work and coordination by municipalities and DEQ's lab.

DEQ's lab analyzed the samples and has provided provisional results to each facility. Generally, the samples did not show widespread exceedances of the initiation levels. Almost all of the facilities had concentrations of cholesterol and coprostanol above the initiation levels. Cholesterol and coprostanol are naturally-occurring byproducts of human and animal digestion and are present in wastewater regardless of what people eat. The samples from two facilities showed arsenic above initiation levels, and one facility's sample showed PCBs and furans were detected above the initiation levels. DEQ did not detect the other 117 persistent pollutants above initiation levels in this first sampling event.

The project team is working on potential approaches should the second sampling event yield results similar to the first round provisional results. Municipalities and DEQ's lab are currently gearing up for the second round of sampling, scheduled to begin on November 1.

Graywater rulemaking

DEQ's Graywater Advisory Committee, which has been meeting monthly since December 2009, met October 14, and substantially completed their recommendations on the treatment, disposal and reuse of graywater. DEQ is considering these recommendations as it develops new rules to be proposed for adoption. The legislature directed EQC to consider the recommendations of an advisory committee when adopting rules on the permitting of graywater reuse and disposal systems.

The committee developed a series of recommendations related to graywater use, requirements for treatment in some situations or with certain graywater sources, guidelines for where and how

to site graywater irrigation systems and standards for technology- and performance-based treatment systems. The committee proposes a tiered approach to permitting, related to the proportional risk to human health and the environment and based on gallons of graywater used per day and what, if any, treatment processes are used.

The Graywater Advisory Committee's report and recommendations will be presented to the EQC at the December 2010 meeting. DEQ plans to release draft rules for public comment beginning in February 2011, and to bring final proposed rule for commission action in August or October 2011.

Turbidity standard rulemaking

DEQ is developing revisions to the water quality standards for turbidity. DEQ's objective is to propose a revised rule that protects beneficial uses, such as aquatic life and drinking water, that can be implemented across all water quality programs, and that accounts for naturally occurring turbidity. In order to form the foundation of the rule and inform the discussions of an advisory workgroup, DEQ developed a technical document summarizing the best available science regarding effects of turbidity on beneficial uses and other relevant technical issues. A seven-member peer review panel of scientists provided comments on several drafts of the document and provided invaluable input. DEQ finalized the document in September.

In July, DEQ convened a stakeholder advisory workgroup to provide input on the policy and economic implications of proposed rule language. DEQ has held three meetings and has focused on rule options to address the stated objectives. The workgroup includes 14 members representing a wide range of interests, including industry, municipalities, Tribes, fishers, environmental groups, dredging interests, miners, forestry, agriculture and transportation. In addition, five federal and state agencies, the U.S. EPA, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Oregon Department of Forestry, and Oregon Department of Agriculture, are serving as agency advisors to the workgroup. DEQ expects the group to meet through the end of November. DEQ anticipates proposing a draft rule for public comment in February 2011, with the goal of having a final proposed rule submitted to the EQC for action by June 2011.

Human health toxics criteria and implementation tools rulemaking

The toxics standards rulemaking project is nearing the end of the rule development phase and DEQ is preparing proposed rule language, supporting documentation and required rulemaking documents for public comment. DEQ will provide an information item to EQC in December prior to publishing the proposed rule for public comment in January. At that time, DEQ will present all the components of the package and answer commissioners' questions. DEQ also plans to propose the arsenic, iron and manganese criteria revisions to the commission for action in December.

DEQ held the final Rulemaking Workgroup meeting to discuss the proposed rules and the fiscal impact statement October 4. Key discussion items included final proposed rule related to non-NPDES sources, the fiscal impact statements, the Background Pollutant Allowance, and a

permitting implementation tool. EPA expressed concerns about the Background Pollutant Allowance, but said they will continue to work with DEQ and interested workgroup members on this issue. While there is not agreement amongst the workgroup members about all the provisions in the rule package, the workgroup discussions have helped DEQ understand the different views and needs of the stakeholders and evaluate the rule options.

DEQ will have an information meeting with the Rulemaking Workgroup members in December to present the final proposed rule package, as a courtesy, prior to opening the formal public comment period.

DEQ intends to develop draft internal management directives concurrent with the rulemaking process. We have committed to:

- Develop a detailed annotated internal management directive outline that will be available to the public during the public comment period to provide additional information.
- Develop a draft internal management directive prior to the adoption of the rule to assist DEQ and EQC in understanding how the proposed criteria, permitting tools and nonpoint source provisions will be implemented.

DEQ will finalize the internal management directives after EPA approval of the standards rules.

Hermiston Foods

DEQ has been involved with permitting and compliance actions regarding Hermiston Foods since it issued the original wastewater land application permit in 1989 for the Windblown Ranch site. In 2009, the permit was modified to allow land application at the present location known as the Koester & Chowning site. The permit allows the storage and land application of wastewater from the processing of various vegetable crops.

Since 1989, DEQ conducted six compliance inspections: Aug. 19, 1997; Oct. 12, 1998; June 6, 2001; June 28, 2002; Jan. 8, 2009; and June 23, 2010.

There have been six enforcement actions to date:

- Nov. 8, 1996: Notice of Noncompliance for failure to land apply waste in accordance to the permit requirements;
- March 3, 2008: Warning Letter for a violation of nitrogen loading in excess of the agronomic rate;
- Feb. 10, 2009: Warning Letter for failing to certify the annual report and a second violation of nitrogen loading rates;
- Nov. 24, 2009: Warning Letter for irrigating 35,000 gallons of wastewater on a site that was not permitted to receive wastewater;
- March 1, 2010: Warning Letter for exceeding the hydraulic loading rate at the Windblown Ranch site; and.
- June 30, 2010: Warning Letter for allowing irrigation spray to leave the site at the east boundary road. With this violation, the company was required to observe a 100-foot setback from all access roads, public roadways, and the irrigation ditch.

Most recently, both Hermiston Foods and the local Pendleton DEQ Office have received numerous complaints regarding odors from the wastewater. Hermiston Foods is required to respond to the complaints by permit condition. DEQ staff and managers have responded to many of the complaints by visiting the site and personally experiencing the odors, including meeting with neighbors at their homes. DEQ staff, with Umatilla County officials and representatives of the Department of Agriculture, met with neighbors Sept. 28, 2010, to listen to their concerns about odors and overspray from Hermiston Foods. DEQ plans to hold another listening session in November.

DEQ is working with Hermiston Foods, Umatilla County and ODA to develop a plan to address the issues raised by concerned citizens, including plans to optimize the wastewater management system across all parameters so that it can meet performance expectations and at the same time address issues of wind drift and odors. DEQ is also developing a report on this issue, as requested by the commission.

President Obama signs pharmaceutical take-back bill into law

On October 12, President Obama signed S. 3397, the "Secure and Responsible Drug Disposal Act of 2010," into law. The law authorizes the U.S. Attorney General to promulgate regulations to guide the disposal of controlled substances by individuals.

Resulting regulations may allow individuals to drop off unused pharmaceuticals at long-term care facilities, which may now be authorized to dispose of the drugs without the need for Drug Enforcement Administration registration or oversight. The intent of the legislation is to prevent pharmaceuticals from polluting and the water. It also aims to keep prescription drugs from unintended users. Unlike a House version of the bill previously floated, the final legislation does not require that EPA undertake a study to investigate the environmental impacts of prescription drugs in waterways.

Some states continue to find increasing levels of pharmaceuticals and endocrine-disrupting compounds in sampled water throughout the country. Many states have enacted their own drug take-back programs, but implementation of the programs has been hindered by federal regulations prohibiting collection of controlled substances without DEA approval on a case-by-case basis and with direct involvement of full-time law enforcement officers. It is expected that the new law signed by the President will eliminate this obstacle.

EPA allows higher percentages of ethanol for newer vehicles

U.S. EPA waived a limitation on selling fuel that is more than 10 percent ethanol for model year 2007 and newer cars and light trucks. The waiver applies to fuel that contains up to 15 percent ethanol, known as E15. This represents the first of a number of actions needed from federal, state, and industry towards commercialization of E15 gasoline blends. EPA Administrator Lisa P. Jackson made the decision following a review of the U.S. Department of Energy's extensive testing and other available data on E15's impact on engine durability and emissions.

This decision allows the use of more ethanol, which can help meet the renewable fuels standard

as well as the low carbon fuel standard. With ethanol limited to 10 percent of gasoline, only so much ethanol can be used in conventional vehicles. While there are a number of flex-fuel vehicles that can handle blends of 85 percent ethanol (E-85), there currently is very little fueling infrastructure to deliver E-85. By raising the blend limit for new vehicles from 10 to 15 percent, EPA has enabled more low carbon fuel to be blended with gasoline. EPA is considering extending this action to older vehicles, pending a review of how this will affect the vehicles and emissions. Since 1979, up to 10 percent ethanol or E10 has been used for all conventional cars and light trucks, and for non-road vehicles.

The Energy Independence and Security Act of 2007 mandated an increase in the overall volume of renewable fuels into the marketplace reaching a 36 billion gallon total in 2022. Ethanol is considered a renewable fuel because it is produced from plant products or wastes and not from fossil fuels. Ethanol is blended with gasoline for use in most areas across the country.