

**Date:** April 23, 2009

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda item J, Informational item: Director's dialogue  
April 29-30, 2010 EQC meeting

**Human health water quality criteria**

At its February meeting, the commission asked DEQ to extend the October 2010 rule adoption timeframe for water quality standards setting an Oregon "fish consumption rate" of 175 grams per day. In response, DEQ is moving the adoption date to mid-2011. DEQ put a new project work plan together that includes new work items requested by the advisory committee such as implementation ready TMDLs, a nonpoint source section in DEQ's antidegradation policy, state pretreatment program expansion, and rule provisions for toxic sediment control.

**Suction dredge general permit 700PM**

DEQ is in the process of reissuing the general permit for suction dredge mining for two reasons. The current permit expires June 30, 2010, and the Oregon Circuit Court of Appeals recently ruled that the current permit exceeds DEQ's authority by regulating the placement of fill material. The Eastern Oregon Mining Association and the Northwest Environmental Defense Center challenged the permit. The court determined the regulation of fill material is within the exclusive jurisdiction of the U.S. Army Corps of Engineers. This means that suction dredge miners could be required to get a section 404 permit from the Corps in addition to a 402 water pollution permit from DEQ. The Eastern Oregon Mining Association has requested reconsideration of the court's decision.

DEQ held a town hall meeting in Portland on April 13, and approximately 50 people attended, the majority of whom were miners. The two main issues were:

- DEQ's proposal to apply a 300-foot limit for visible turbidity and monitoring requirements to all devices covered under the permit. The previous permit exempted suction dredges with hoses smaller than four inches from these requirements.
- Consistent with Division 13 regulations, the proposed permit requires that there be no visible turbidity from these activities in wilderness areas established prior to 1972.

The public notice on the proposed permit began April 22. DEQ will hold public hearings in Medford, Portland and Pendleton. DEQ plans to issue the final permit by department order.

### **Wapato Lake**

Wapato Lake in Washington County is owned both privately and collectively by the Wapato Improvement District. It is a wetland area currently managed to drain standing water accumulated during the wet season so crops can be grown during the dry season. During 2008, the dike that prevents flooding from Wapato Creek and the nearby Tualatin River breached. Water was pumped from the lake during July and August, which led to drinking water treatment problems downstream, and may have been a cause of water quality problems and algal blooms further downstream in the lower Tualatin River. In response to this issue, DEQ worked with the Wapato Improvement District to develop a Water Quality Management Plan. This plan identified what level of pumping could occur during the winter, Nov. 1 to April 30, and summer, May 1 to Oct. 31 seasons, and created a notification process when conditions preclude the Wapato Improvement District from following the management plan.

The pump used to drain the lake is currently not functional and the lakebed is substantially filled with rainwater. The Joint Water Commission and Clean Water Services have provided pumps to lower the water level in the lake to avert summertime water quality problems. Pumping began around April 1 with the intention that the lake could be pumped dry or substantially lowered by May 1, 2010, but recent rain and high water events mean that the water level is being lowered more slowly than originally predicted. The Joint Water Commission and Clean Water Services are monitoring basic water quality parameters, and have contracted with the USGS to install continuous monitors and to analyze samples for algal species and population size.

DEQ is working with the Joint Water Commission and Clean Water Services to develop a water quality monitoring plan to track any pumping that may need to occur after May 1, 2010. Water quality problems are not anticipated in early May, and a revised estimate for drying the lake this year is not available yet. All parties involved will work to dry the lakebed before adverse water quality conditions develop.

### **Cruise ship water quality study**

The 2009 Legislature passed House Bill 3123 that directs DEQ to study the effects of sewage, gray water and hazardous materials discharges from passenger vessels and ships. The bill also directs us to study the availability of facilities that provide sewage removal for passenger vessels and to report to the Legislature next January.

During September 2009, DEQ gathered information during a tour of The Norwegian Star, a cruise ship docked at the port in Astoria. Since then, DEQ began drafting the legislative report and plans to review existing water quality studies, laws and regulations used in California, Washington and Alaska related to discharges from passenger vessels and will research passenger vessel routes from ships that travel in Oregon and where the discharges could occur.

### **Permit documents repository**

In June 2009, the Water Quality Division implemented a commercial electronic content management system to store NPDES Individual Permits and permit related documents.

DEQ implemented the software to allow for easy access to NPDES permit documents from DEQ offices throughout the state, and to provide public access to NPDES permits and related documents through the DEQ public website. DEQ has uploaded all current NPDES Individual Permits and some related documents to the searchable system, and plans to include all documents related to these permits. DEQ plans to create a similar archive for onsite program permits and documents.

### **Klamath TMDL**

The Klamath TMDL is out on public notice and comment. DEQ held a public information meeting in mid March, and has received significant public comment in support and in opposition to the proposed water quality management plan. DEQ received requests to extend the comment period to May 27 from the original April 12 date.

### **Graywater rulemaking update**

DEQ's Graywater Advisory Committee continues to meet monthly to provide recommendations on the treatment, disposal, and reuse of graywater. During the March meeting in Eugene, the committee began developing preliminary recommendations for the use of low-flow untreated graywater. At the April meeting in Portland, committee members clarified their decision-making process and approved a committee work plan. The advisory committee will continue to meet monthly until fall 2010. As the advisory committee begins to develop recommendations on graywater, DEQ's internal rulemaking team will begin drafting rules. DEQ will hold a formal public comment period on the proposed rules in early 2011, and expects to propose rules for adoption at the October 2011 commission meeting.

### **Clean Water State Revolving Fund audits**

EPA's Office of Inspector General and Office of Grants and Debarment are auditing DEQ's Clean Water State Revolving Fund program and focusing on projects funded under the 2009 American Recovery and Reinvestment Act. DEQ has notified the Governor's Office about these audits. Oregon was one of three states selected for an audit to assess how EPA and DEQ are operating the program. Auditors will review project files, policies, procedures, and other documentation related to the scope of recovery act project oversight. At the end of the preliminary research phase, the auditors will inspect the sites of two recovery act projects. This is likely to occur in June 2010. DEQ will receive a report of any audit findings later this year.

EPA is currently auditing DEQ's financial management system pertaining to recovery act funds which include a review of DEQ accounting policies and procedures, general financial oversight

of recovery act projects and compliance with specific recovery act requirements including the Davis Bacon Act, Buy American and reporting.

### **Updating air toxics benchmarks**

DEQ is proceeding with a rule writing process to adopt 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. DEQ held hearings on this proposal in Portland, Medford and Bend in March and April. No one attended any of those hearings.

Shortly after the last hearing, DEQ heard from concerned residents of northwest Portland who were disappointed that they did not hear about the rulemaking hearings and missed the opportunity to comment. DEQ extended the comment period to June 30 to accommodate their concerns and scheduled one additional hearing. This hearing will take place at 6 p.m. on Tuesday, May 18, at the Oregon Department of Transportation, main floor conference room AB, located at 123 NW Flanders Street in Portland. Vice-chairman Williamson has graciously agreed to facilitate this hearing.

The residents were also interested in addressing the commission directly. We have set up a phone line at our Portland HQ office and invited the northwest Portland neighbors to provide comment over the phone at tomorrow's public forum. We are expecting to hear from people living in northwest Portland about these proposed rules and other air quality concerns they have in their neighborhood. We plan to bring these proposed rules to you for your consideration later this year.

### **Climate change**

On April 1, EPA issued national greenhouse gas emission standards for cars and light duty trucks, complementing new fuel economy standards issued by the National Highway Traffic Safety Administration. These rules apply to 2012 and later model years. Oregon and 12 other states that opted into California's motor vehicle standards will revise programs to allow compliance with the federal greenhouse gas standards to be treated as compliance with our standards from 2012 to 2016.

The new standards trigger requirements for states to begin permitting major stationary sources of greenhouse gases. The standards will become effective Jan. 2, 2011, the start of the 2012 vehicle model year. In late April or early May 2010, EPA is expected to adopt the greenhouse gas "tailoring" rule, which will establish the threshold for permitting. In a letter to Congress, EPA Administrator Lisa Jackson indicated that this threshold would be substantially higher than the level initially proposed of 25,000 tons per year of greenhouse gas emissions. Administrator Jackson also indicated that permitting will initially be required only for sources currently subject

to the Title V permitting program, and that the permitting threshold will gradually lower until 2016. While DEQ has statutory authority to permit stationary sources of greenhouse gases, rule changes and new fee authority may be needed to implement the program.

### **Fine particulate permitting**

As a result of legal action, EPA plans to repeal a policy that has deferred major new source construction permitting for fine particulate emissions. This permitting is known as New Source Review in areas that are violating federal air quality standards and Prevention of Significant Deterioration in areas that are meeting federal air quality standards. These kinds of permitting are normally required for major new and modified sources of criteria pollutants such as fine particulate, PM<sub>2.5</sub>. However, under EPA's "surrogate policy," states have been generally allowed to conduct New Source Review or Prevention of Significant Deterioration for coarse particulate, PM<sub>10</sub>, in lieu of fine particulate.

The surrogate policy has been necessary because EPA has not yet finalized all of the key implementing rules needed for states to conduct permitting for fine particulate. EPA recently established significant emission rates for fine particulate, which are used as the trigger for New Source Review or Prevention of Significant Deterioration permitting.

EPA has indicated that it will soon adopt significant impact levels, used for ambient analysis; increments, used to evaluate air quality deterioration, and offset requirements for fine particulate and precursors, such as chemicals that react to form fine particulate. The Environmental Quality Commission will need to adopt these program elements, as well as the baseline period, which is used to establish baseline emissions and determine net emission increases for modified sources. In addition, DEQ will require permitted sources to establish their fine particulate emission rates and will modify permits to include fine particulate emission limits. Because of the time needed for these actions, DEQ and other states have asked EPA to delay the repeal of the surrogate policy. DEQ is considering emergency rulemaking to adopt key program elements at the June commission meeting. A follow-up permanent rulemaking, currently targeted for consideration at the December meeting, would address both fine particulate and greenhouse gas permitting.

### **PGE Boardman**

On April 2, PGE submitted a request for the commission to revise regulations that apply to the company's coal-fired power plant in Boardman. In June 2009, the commission adopted Best Available Retrofit Technology requirements for the plant as part of Oregon's regional haze plan. Those requirements, which phase in from 2011 to 2018, will reduce mercury by 90 percent, sulfur dioxide by 80 percent and nitrogen oxides by 80 percent for approximately \$500 million (2006 dollars).

In hearings before the Public Utility Commission and the Oregon Legislature, PGE has indicated that, considering the risk of future federal carbon regulation, the least costly option for electricity ratepayers is to close the plant in 2020. PGE plans to install the 2011 controls, but proposes to use low sulfur coal in lieu of installing the scrubber. PGE contends that the scrubber is no longer required because the early shutdown date increases the cost per ton of emissions reduced beyond the BART criteria.

PGE's proposal was submitted in the form of a petition for rulemaking. DEQ will review the petition and consult with state and federal agencies and committees to determine if the proposed revised requirements would meet BART criteria. DEQ may propose revised rules for consideration by the commission later this year. Any change in the BART rules also must be approved by EPA before becoming effective.

### **Paint product stewardship**

Oregon is the first state to establish a paint product stewardship program. The program will provide free and convenient collection sites throughout the state for leftover paint that would otherwise be disposed of in a landfill. DEQ is responsible for reviewing and approving the stewardship plan. DEQ's solid waste program is working with Paint Care Inc. to resolve several program implementation issues. The program must be implemented by July 1, 2010.

### **Senate Bill 737 analytical work**

The Laboratory and Environmental Assessment Division has been working closely with DEQ accounting, the water quality program, the Association of Clean Water Agencies and individual municipalities in preparation for conducting the analyses on effluent from the 52 largest wastewater treatment plants for the 118 persistent priority pollutants adopted by EQC. The work has included development of the intergovernmental agreements that will be signed with each of the municipalities to fund the work, developing a Project Quality Assurance and Sampling and Analysis Plan, and the development and validation of analytical methods to be used for the analyses. Two sampling events are planned for each facility, one to be conducted this summer and one late next fall.

### **Portland-area air quality**

DEQ held a "restart" meeting of the Portland Air Toxics Solutions Advisory Committee April 20, 2010. The project had paused to give DEQ time to conduct additional technical analyses requested by the committee and to fine tune the project management plan. During March, DEQ met with several interest groups, including local government, industry and environmental or public representatives to provide additional information in advance of the full meeting.

### **ESCO**

ESCO hosted a meeting at its facility with DEQ and members of the northwest Portland

neighborhood community to discuss the contractor they have hired to perform an emission controls alternatives analysis. Representative Mitch Greenlick also attended the meeting. It was a productive dialogue that included support for jobs and a request for actions ESCO could take this summer to address neighborhood concerns.

DEQ plans to release a request for proposals to conduct an independent audit of ESCO's emission control strategies, study what other similar facilities are doing to reduce controlled and fugitive emission sources of odor, particulate and toxics. This request for proposals will be delayed, however, due to capacity limitations at DEQ. DEQ is in the process of arranging a conference call with members of the northwest Portland community to communicate this information and to discuss the next steps in moving forward with other aspects of ESCO's Title V permit renewal.

### **Tank farms**

DEQ held a public meeting March 9 regarding three gasoline terminal permits under review for renewal: the Equilon Standard Air Contaminant Discharge Permit, the Chevron Title V permit, and the Kinder Morgan Title V permit. Portland Office of Emergency management staff and representatives from the gasoline terminal facilities attended. DEQ will schedule a formal public hearing May 17. The public comment period will be reopened when the public notice for the public hearing is published. The March 9 meeting provided a good opportunity for the public to hear directly from the tank farm representatives and DEQ has a number of follow-up items from the meeting.

### **Proposed Bradwood Landing liquefied natural gas project**

On Feb. 17, 2010, DEQ sent a letter to NorthernStar indicating that the company would have to complete a three-dimensional modeling effort with actual sampling data during the months of August and September 2010 to fully inform DEQ's continued work on the 401 water quality certification decision. In the letter, DEQ told NorthernStar that if the company did not withdraw and resubmit the 401 certificate application, DEQ would continue to work toward the statutory deadline of May 7, 2010 to render a permit decision based on the information DEQ currently had.

DEQ held a public information meeting in Knappa, in Clatsop County, March 3, 2010, to share information, answer questions and provide an opportunity for people to provide comments for DEQ to consider in developing the draft air and water permits and water quality certification. About 200 members of the public attended, 60 attendees gave oral comments and the meeting lasted four hours. The draft permits and certification will not be issued for public comment until local land use changes are acknowledged and all information requested from the applicant has been received and analyzed. While Clatsop County approved land use for the project in 2008, challenges have resulted in the Land Use Board of Appeals remanding the decision to the

County. A second remand to Clatsop County occurred in April 2010. DEQ expects the applicant to submit technical information requested for the certification on in November 2010 and DEQ's current deadline for a certification decision is March 2011.

NorthernStar recently withdrew and resubmitted their 401 water quality certification application to DEQ. The company has inquired as to the status of the air and water discharge permits and storm water permits for the facility. DEQ is meeting internally to review the status of that permitting work and will be communicating the outcome of the discussion with the company soon.

### **Proposed Oregon liquefied natural gas project**

In October 2008, Oregon LNG filed an application with the Federal Energy Regulatory Commission to build a liquefied natural gas facility in Warrenton. DEQ received an application for an air emissions permit at that time, but the accompanying Land Use Compatibility Statement was not adequate for issuing an air quality permit. Recently, Oregon LNG shared initial information with DEQ related to the water discharge permit application and the company has stated its intent to submit the application soon. The 401 water quality certification process has not yet begun on this project, but the Department of Energy expects the Draft Environmental Impact Statement from FERC by April, which would likely start the 401 process. When applications and permitting for the project move forward, DEQ will hold public meetings in Warrenton to share information with community members and hear local perspectives and concerns.

### **Proposed Jordan Cove liquefied natural gas and Pacific Connector Pipeline project**

The proposed Jordan Cove liquefied natural gas terminal would be located on the North Spit of Coos Bay and the 234-mile pipeline would originate at the facility and travel through Coos County to Douglas, Jackson, and Klamath Counties, terminating in Malin, Oregon. FERC published a Draft Environmental Impact Statement for the project in August 2008. Because of the coordination complexities among three applicants, (Jordan Cove LNG, LLC, International Port of Coos Bay and Pacific Connector Gas Pipeline Project, LP), the US Army Corps of Engineers published a Joint Permit Application for public comment in August 2009 that incorporated DEQ Section 401 water quality certification information. Due to the volume of material to review and public interest in the project, the public comment period was extended to Dec. 27, 2009.

During the comment period, DEQ made copies of all project materials available to the public at DEQ offices in Portland, Coos Bay and Medford. DEQ Section 401 program staff and several Western Region staff have been coordinating with other state and federal agencies and the applicants for several years. The applicants have not yet filed air or water discharge permit applications with DEQ, but they have been working with DEQ's Air Quality Division to prepare

the model for the Title V permit. Depending on applicant responses to information requests, DEQ may hold a public meeting in Coos Bay in late spring or summer 2010.

### **Audit committee**

Commissioner Judy Uherbelau's two-year term on DEQ's Internal Audit Advisory Committee ends on June 23, 2010, along with three other members. The committee charter specifies that one of the eight members must be from the commission, and DEQ would like to extend the opportunity for another commissioner to serve on this committee. The committee provides leadership, direction and oversight to audit activities performed under Oregon's internal auditing rules; meets between two to four times a year to recommend audit priorities, and review and approve annual audit plans; and reviews the appointment and termination of the auditor and ensures the audit function remains independent of management influence or interference.

DEQ's internal audit function thanks Commissioner Uherbelau for her insights and attention to detail.

### **Policy advisory committee for the Oregon Transportation Commission**

The Oregon Department of Transportation and the Oregon Department of Land Conservation and Development are forming a policy advisory committee for the Oregon Transportation Commission, and have requested that a commissioner serve on this committee. The committee will advise the Oregon Transportation Commission on the statewide transportation greenhouse gas reduction strategy required by Senate Bill 1059. Vice-chair Williamson has volunteered to serve as the commission's representative for the committee's 18 month to two-year timeframe. Since vice-chair Williamson's EQC term ends June 2011, his representation on the committee will extend past his service on the commission.

The commission does not need to take formal action on this item, but it is an opportunity to discuss and either concur with or object to vice-chair Williamson's appointment to the policy advisory committee as the Environmental Quality Commission's representative.