

To: Environmental Quality Commission

**From: Rachel Melissa, Pearl Legal Group PC, on behalf of
Farm Power Northwest, LLC; Farm Power Tillamook, LLC; Farm Power Misty Meadow, LLC**

Date: January 25, 2019

**Re: Comments on the Composting Program proposed temporary rule regarding pathogen
reduction limitations as applied to liquid digestate from off-farm digesters, OAR 340-096-0140**

The following is a written transcript of the comments I provided during the EQC Public Forum held on January 24, 2019.

My name is Rachel Melissa, I am an attorney at Pearl Legal Group and represent two anaerobic digesters in Tillamook County that collectively can be referred to as Farm Power. I would like to speak about Item J of the EQC agenda, regarding a proposed change to the Composting rules. Specifically, I'd like to raise concerns about the procedural nature of the rulemaking process for the proposed temporary rule which would eliminate the pathogen limitation requirement for liquid digestate as currently applied to off-farm digesters.

To give some context: on behalf of Farm Power, I filed a Petition for Reconsideration with DEQ in early December 2018 regarding a modified permit that was issued by DEQ to the Port of Tillamook Bay's anaerobic digester facility. The Petition for Reconsideration raised several legal deficiencies in the modified permit, including the inability of POTB to meet DEQ's established pathogen limitation requirement.

We have been awaiting DEQ's response to our Petition for Reconsideration, which is due to be issued in early February.

I was therefore surprised to receive a call from Gary Vrooman of the Oregon Department of Justice just 10 days ago alerting me that DEQ was undergoing a temporary rulemaking process to eliminate the pathogen limitation requirement altogether.

That courtesy call was appreciated, but I received no documentation regarding the proposed rule change at that time. I was provided no further information regarding the context, basis, or science behind the temporary rule, which would have allowed me to prepare thorough and meaningful comments for the EQC's consideration. Additionally, I was not informed of the reasons behind the emergency nature of this temporary rule. It was not clear why this had to happen so quickly, without the typical public involvement of the standard rulemaking process.

In fact, despite more than one request, I did not have access to DEQ's justification documents regarding this temporary rule until this morning at about 7:15 a.m., when I checked the DEQ website and finally found linked materials on this topic. This gave us just over 5 hours to review the documents.

I was also dismayed to find that the agenda does not allow for comments immediately subsequent to your discussion on Item J, though some additional comment time is being provided for other topics that are on the agenda for tomorrow. Consequently, any comments you are hearing today on Item J are

completely disconnected from your consideration of the issues surrounding Item J. This approach does not allow for a cohesive discussion with all interests fully represented at once.

My overall point is that the entire process of creating and presenting this temporary rule seems to have rushed, evasive, and designed to discourage meaningful public participation on a very important issue for this industry.

If this temporary rule is adopted, it will have significant impacts in the digester industry, especially in Tillamook County. However, aside from this restricted public forum, the other affected parties have had very little opportunity to review the materials, understand DEQ's legal and technical basis, and express substantive concerns about the temporary rule prior to its consideration by this commission.

Thank you for your time.