



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

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September 23, 2010

Colonel Steven R. Miles,  
District Commander  
U.S. Army Corps of Engineers  
ATTN: CENWP-OP-GP  
P.O. Box 2946  
Portland, OR 97208-2946

Attn: Carolyn Schneider

RE: Response to public comments on DEQ Solid Waste Requirements for Lower  
Willamette River Federal Navigation Channel Maintenance Dredging at Post Office  
Bar – CENWP-PM-E-10-04

Dear Colonel Miles:

As you know, DEQ has been considering 401 Water Quality Certification (WQC) for the US Army Corps of Engineers (USACE) proposal for maintenance dredging of the Willamette River federal navigation channel and placement of dredged material on West Hayden Island.

During the course of DEQ's evaluation, a request for a public hearing on the proposal was received and DEQ held a public hearing on August 30, 2010, per Oregon Administrative Rule (OAR) 340-048-0027. At the hearing, DEQ recorded oral comments from 20 speakers and received subsequent written comments until the comment deadline on September 7, 2010.

DEQ identified comments relevant to the 401 WQC evaluation and incorporated responses to those issues into the final Evaluation and Findings Report and 401 WQC, together referred to as the 401 WQC decision. However, the bulk of comments received focused on DEQ's Solid Waste requirements, including DEQ's Beneficial Use Determination under OAR 340-093-0260 through 340-093-0290; land use authorities of local planning jurisdictions; and environmental justice issues. While these comments are outside of DEQ's 401 WQC authority, DEQ has summarized the comments into topics and offers responses for consideration by USACE and the public for inclusion as an attachment with the 401 WQC decision.

### Comment Topics with DEQ Responses

1. Please describe the Beneficial Use Determination (BUD) process undertaken for PO Bar sediments

DEQ evaluated information provided by the Port of Portland in their BUD application including sample results from February 11, 2009 (Willamette River FNC Post Office Bar Reach (RM2.2) Sediment Quality Evaluation Report, February 2009, prepared by Tim Sherman). Three of 12 samples were identified as representative of the dredged material to be placed at West Hayden Island. Sediments were determined to not meet DEQ's criteria for clean fill. Post Office Bar sediments proposed for placement at West Hayden Island were compared to screening level values protective of human and ecological receptors. Sediment contaminant concentrations are all below risk-based concentrations protective of human health considered for the current or reasonably likely future

recreational or occupational land use. The maximum detected concentration of two contaminants slightly exceeds screening level values protective of ecological receptors (including threatened species such as bald eagles). The maximum detected concentration of zinc is 89 parts per million (ppm), the screening level value is 86ppm, and the average zinc concentration is 84.4ppm. The maximum detected concentration of DDx (a pesticide) is 10.7 parts per billion (ppb), the screening level values is 10ppb, and the average DDx concentration is 7.4ppb. These contaminant concentrations do not pose an undue risk to either human health or the environment, especially considering both the understood future land use and the requirement that if Post Office Bar sediments are not capped within four years, then the dredge-placement surface must be re-sampled and evaluated for protectiveness.

2. Were land use, zoning, etc. considered in the BUD? Please detail the responsibilities of the county and the city in approving a land use compatibility statement (LUCS).

Although West Hayden Island is outside of the City of Portland's urban growth boundary, Multnomah County has an intergovernmental agreement with the City of Portland authorizing the City to make all the zoning decisions, including land use compatibility determinations, for West Hayden Island.

DEQ did not require a new LUCS for the PO Bar BUD application. The USACE 404 permit application the Port of Portland submitted in 2007 for dredging at T5 included a City/County Affidavit (signed by Portland City Planner Kimberly Miller on May 22, 2007) certifying that the proposed project was compatible with the applicable comprehensive plan and land use regulations. DEQ determined that compatibility statement was sufficient for the placement of sediments from T2, T5 and Post Office bar upland at West Hayden Island, in part based upon information provided by the Port of Portland on May 4, 2009 (from Marla Harrison, Port of Portland, to Tom Roick, DEQ).

3. Was placement at a location in the floodplain considered in the BUD?

Placement within the floodplain was not evaluated as part of the BUD.

4. Was interaction with groundwater, the river (through flooding and groundwater), and the adjacent wetlands considered in the BUD?

Sediment samples were compared to screening level values protective of human and ecological receptors. DEQ did not evaluate the samples for groundwater concerns.

5. How were seismic considerations addressed in the BUD?

DEQ did not evaluate seismic considerations as part of the BUD approval.

6. Were risks to recreational users considered in the BUD?

Yes. A description of the risk evaluation is provided in comment 1 above.

7. Did DEQ evaluate whether placement of dredge sediments on West Hayden Island would increase hazardous substances in a "sensitive environment?"

DEQ determined that placement of dredged sediments will result in a de minimis increase in the amount of hazardous substances at the site and will not adversely impact human health or sensitive environments.

8. Please describe the basis for DEQ's determination that the placement of dredged sediments on West Hayden Island would not be a speculative use.

DEQ's determination regarding the use of the sediment was based on DEQ's understanding that the West Hayden Island Placement Facility has long been planned by the Port of Portland for industrial development and that filling that area was necessary for that development. The West Hayden Island facility has a long history of receiving dredged sediments as fill, and the proposed action addressed in the WHI BUD would augment existing fill in support of the future industrial development. DEQ understands that the proposed placement of sediment at the West Hayden Island facility from the Post Office Bar dredging is an allowed use under existing land use rules. This understanding was based on conversations with and representations made by the Port of Portland and from other sources and documents. While the existing zoning of the West Hayden Island facility may not allow industrial development, based on DEQ's review of available information, DEQ concluded that it was reasonably likely that industrial development would occur within the West Hayden Island facility.

9. Please discuss confirmation by the City that the approved LUCS covered both dredging (as exempt from Greenway review) and placement of dredged material on West Hayden Island.

The City has submitted a new LUCS for the PO Bar project, dated September 22, 2010, confirming that the proposed dredging and placement of dredged material on West Hayden Island are compatible with applicable comprehensive plans and land use regulations.

10. Please discuss how the Beneficial Use rulemaking process and the BUD addressed environmental justice issues, as there is a disenfranchised community on Hayden Island within a few hundred feet of the placement location.

DEQ sincerely appreciates the concerns West Hayden Island residents have expressed as an environmental justice community about their proximity to the proposed placement location. DEQ regrets that it did not inform the community of the BUD application before it was issued. As noted with comment 2 above, before issuing the BUD, DEQ staff evaluated the risks associated with the placement of the dredged sediment in the proposed location and determined they did not pose an undue risk to either human health or the environment.

The beneficial use rules establish criteria and procedures for DEQ to follow in acting on applications for the beneficial use of solid waste. The rules were written to address the universe of solid wastes and potential beneficial uses, such as the use of spent foundry sand to replace virgin sand in concrete or the use of dredged sediments or other waste materials as fill. They do not address applications of the rules in specific instances such as the proposal to place dredged sediments on West Hayden Island. For that reason, DEQ did not identify specific environmental justice issues in this rulemaking. DEQ will need to identify potential environmental justice issues with specific applications in the future for beneficial use determinations.

DEQ is committed to improving our outreach to identify environmental justice issues and to ensuring that our decisions do not result in a disproportionate impact on environmental justice populations.

11. Please discuss why environmental groups were not engaged during the Beneficial Use rulemaking process.

Environmental groups were engaged during the beneficial use rulemaking process. DEQ discussed potential beneficial use rulemaking at a Solid Waste Forum and held a subsequent meeting to help

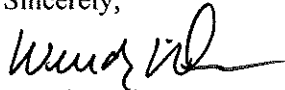
gauge stakeholder interest and issues in pursuing beneficial use rules. Notice of the meetings was distributed to mailing lists of persons interested in solid waste issues and to other targeted stakeholders and interest groups and was posted on DEQ's Web. DEQ solicited recommendations from the Oregon Environmental Council for environmental group representation, and Zero Waste Alliance participated throughout the rule development process.

Given the range of potential waste types, beneficial uses, and stakeholders, DEQ held a series of open meetings to engage all interested stakeholders during the rule development process. Notice of meetings was distributed and posted on DEQ's Web and through DEQ's electronic notification system. The mailing list developed specifically for this rulemaking grew to roughly 2,000 subscribers.

Before recommending rules for adoption, DEQ invited public comment and conducted workshops and hearings on the proposed rulemaking statewide. Notice of these opportunities to comment was mailed to over 3,000 people. Several environmental groups were on those mailings lists, including Willamette Riverkeeper, whom Audubon is representing in these comments.

We appreciate the public interest in this project and the opportunity to respond to comments. Please let me know if you have any questions.

Sincerely,



Wendy Wiles  
Administrator  
Land Quality Division

cc: Bob Sallinger, Audubon Society of Portland  
Marla Harrison, Port of Portland