

**Date:** April 4, 2022

**To:** Environmental Quality Commission

**From:** Richard Whitman, Director

**Subject:** Item J: Director's Report (Informational)  
April 6-7, 2022, EQC meeting

## **1. Director's Office**

### **1.1. Future of Work at DEQ**

This winter, DEQ's Leadership Team asked all employees to respond to a survey about their experiences working at DEQ since the start of the COVID-19 pandemic. In this survey, employees were asked about the challenges and opportunities that resulted from the change, for many, to near-exclusive remote work for the past two years. The survey also asked how DEQ could best support employees in their return to office-based work environments, if they have been working remotely, and what their ideal work environments might be.

In total, about 570 employees responded and provided valuable feedback as we plan for the future of work at DEQ. The State of Oregon has lifted its mask mandate, including for state offices, and Governor Brown had indicated her intent to re-open State offices and facilities to public access on May 1, 2022. DEQ employees will not be asked to return to full-time office work on that date; however, each office and each section is evaluating its needs for in-office operations and how to meet the expectations of the public as we continue to operate with limited staff in offices through June. It is important to recognize that some individuals and sections at DEQ have remained in-person throughout, and the important work of the agency's Vehicle Inspection Program, front desk and other administrative staff, laboratory employees and inspectors continued these past two years with adaptations to keep our staff safe as they fulfilled DEQ's mission for the state.

### **1.2. Staffing**

I am sorry to say that Gretchen Harmon has left DEQ, and while we work on finding a new assistant for the Director, Stacey O'Neil is helping both the Director and the Deputy Director.

Penny Robertson will join DEQ next week as the agency's new Human Resources and Payroll Manager. Robertson comes to DEQ from an HR role at Portland Public Schools, and will fulfill a critical manager position as the agency embarks on updates to its recruitment and retention processes and works through a substantial amount of onboarding of new staff.

### **1.3. Internal Audit**

DEQ's Internal Audit Committee, chaired by Commissioner Kile and staffed by Valerie Wicklund, met on March 30, 2022, for its regular quarterly meeting. Wicklund presented the results of her last few months of work, under the audit work plan for FY 2021 (ending June 30, 2022). There were two items of note discussed in the audit committee: (a) ongoing work with the Clean Vehicle Rebate Program to improve controls; and (b) ongoing work with the Environmental Cleanup Program and the Emergency Response Program regarding issues with cost-recovery and non-liquidated debt. DEQ is currently evaluating ways to improve cost-recovery in these two programs, including potential rule changes as well as whether there may be a need for legislative changes.

## **2. Air Quality Division**

### **2.1. Air Toxics Science Advisory Committee Updates**

DEQ and OHA are preparing to nominate candidates for a reconstituted Air Toxics Science Advisory Committee, or ATSAC. Initially convened in 2004, this committee has provided analysis and recommendations to DEQ for setting the Ambient Benchmark Concentrations for DEQ's Air Toxics program. These values, known as ABC's, are non-regulatory health benchmarks that DEQ uses to assess ambient air toxics concentrations and develop reduction plans. In 2021, EQC approved updates to this program and to the Cleaner Air Oregon program. As part of these changes, ATSAC will play a consultative and advisory role for DEQ's Cleaner Air Oregon program. In this role, ATSAC will evaluate changes to DEQ's enforceable air toxics standards, called Toxicity Reference Values.

The first step in this process is to nominate up to seven new members for ATSAC, because the previous members' terms have expired. DEQ and OHA staff are beginning the process of identifying potential new members. After review by DEQ and OHA management, these candidates must then be approved by the EQC for placement on ATSAC. DEQ anticipates recommending the new committee membership for EQC consideration in September 2022.

Once the new committee is established, DEQ and OHA will begin the formal review of our air toxics standards, which is required by rule every three years.

### **2.2. Oregon Clean Vehicle Rebate Program**

As of March 10, 2022, the Oregon Clean Vehicle Rebate Program distributed 18,406 rebates totaling over \$44.4 million to purchasers or lessees of electric vehicles. Of those distributed rebates, \$5.5 million went to Charge Ahead Rebates for low- and moderate-income households. The program's participation rate has steadily increased every year, raising the concern that the program could be oversubscribed in late 2022.

DEQ receives \$12 million annually for the program, via a privilege tax imposed on car dealers. Recently, the Legislature provided an additional one-time allotment of \$15 million to the program - this additional funding will supplement the existing rebate fund and sustain rebate distribution through 2022 and likely most of 2023.

DEQ currently has a proposed rulemaking to make the temporary rule changes adopted by the commission in November 2021 permanent. The proposed rules include adjusted rebate amounts, such as making permanent the higher Charge Ahead Rebate amount of \$5000 and how the program will address implementation if funds are oversubscribed in the future. DEQ will present the final recommendations to the EQC for its consideration at the May meeting.

The program has also issued an RFP for assistance in conducting education and outreach specific to households that may participate in the Charge Ahead program, with a focus on working with community-based organizations and BIPOC communities.

EV sales in Oregon continue to grow rapidly, with close to ten percent of new car sales in the last quarter of 2021 battery or plug in hybrids. Oregon continues to be among the leading states in the nation in the proportion of new passenger vehicle sales that are BEVs or PHEVs, running about one year behind California in adoption rates. The rapid rise in EV adoption, along with renewable diesel, has Oregon well-positioned to meet reductions in greenhouse gas emissions in the transportation sector that are required by the Climate Protection Program, and that are anticipated to be required by forthcoming recommendations for extension of the Clean Fuels Program.

### **2.3. Advanced Clean Cars II Rulemaking**

DEQ plans to bring proposed revisions to the Low Emission Vehicle and Zero Emission Vehicle program rules before EQC later this year. These anticipated rules are based on California's proposed revisions to its vehicle emissions standard program, otherwise known as the Advanced Clean Cars II regulation. California's rules will set new requirements for light-duty vehicle model years 2026-2035. This rule requires 35 percent of new car sales be zero emission starting with the 2026 model year, increasing to 100 percent by the 2035 model year.

Under Section 177 of the federal Clean Air Act, states that choose to adopt vehicle standards that are more stringent than the federal standards for new vehicles may only adopt California's vehicle emission standards. Oregon has opted-in to California's vehicle emissions standards and, to maintain identicality, must also adopt California's rule revision by the end of 2022 to ensure the requirements can apply to the 2026 model year vehicles

#### **2.4. Diesel Mitigation Program**

This week, DEQ's Diesel Emissions Mitigation program announced \$8 million in competitive grant funding to address Oregon's older and more polluting diesel equipment. Funds can be used to retire old equipment and purchase new, zero-emissions and lower emissions replacements as well as install exhaust control filters. DEQ will accept grant applications through June 7 and provide technical assistance for all interested parties at [dieselgrants@deq.oregon.gov](mailto:dieselgrants@deq.oregon.gov).

This is the second grant opportunity offered through the Diesel Emissions Mitigation Program and in 2021 the program received 71 applications totaling more than \$53 million in requests for \$8 million available. The projects selected for the 2021 funding are expected to remove more than 200 tons of harmful air pollution, including nitrogen oxide and fine particulate matter, from Oregon's air. DEQ expects a similar response to this grant opportunity for 2022, showcasing the need for additional diesel emissions mitigation and reduction opportunities.

#### **2.5. Biomass Utilization Working Group**

The Oregon Smoke Management Plan encourages forestland managers to use best practices to limit smoke impacts to communities from forest management activities, including through the use of non-burn fuel treatments specifically on biomass/biofuels utilization.

In 2021, DEQ initiated the Biomass Utilization Working Group consisting of representatives from other State and regulatory agencies, neighboring states, local governments, and biomass stakeholders. Collectively, the Working Group is helping identify potential diverse forest biomass markets that could improve air quality, combat climate change, and promote forest health. Biomass utilization addresses wildfire prevention and has the potential to employ skilled workers in harvesting, transporting, engineering and other green jobs.

#### **2.6. DEQ Monitoring and Smoke Preparedness Work**

Funding from Senate Bill 762 (2021) has allowed DEQ to fund twenty community and tribal projects designed to mitigate and build resilience and preparedness for smoke. Recipients of these projects include: City of Ashland, City of Oakridge, Deschutes County, Town of Lakeview, County of Wallowa, Jackson County, Union County, Wasco County (Columbia River Gorge), Klamath County, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, Confederated Tribes of Siletz Indians, Cow

Creek Band of Umpqua Tribe of Indians, Confederated Tribes of the Grand Ronde, Coquille Indian Tribe, Burns Paiute Tribe, Confederated Tribes of Warm Springs, Biomass One, Southern Willamette Forest Collaborative and the Hood River Soil and Water Conservation District. All projects are to be completed by April 2023 and DEQ will continue to monitor project progress and assist communities and tribal partners as needed.

This legislative funding is also being used to expand DEQ's PM2.5 monitoring network including ongoing equipment maintenance, quality assurance tasks, and data management to ensure the information is accurate and available to the public. The network allows DEQ and partner agencies to assess and forecast poor air quality and issue air quality advisories. The network provides air pollution data to the public in a timely manner collects data to ensure compliance with the Clean Air Act, supports implementation of air quality goals or standards, and is available for research (e.g., long-term studies of the health effects of air pollution). Moreover, this information is essential for employers to comply with developing Oregon OSHA rules regarding worker protection from wildfire smoke.

## **2.7. Klamath Falls Maintenance Plan Submitted to EPA**

Air Quality Planning staff have submitted a first draft of a PM 2.5 Redesignation Request and Maintenance Plan for Klamath Falls to EPA Region 10. DEQ will solicit public comment on the draft plan this summer and bring the proposed plan for EQC review and action in November 2022.

EPA determined that Klamath Falls was in nonattainment with the 2006 PM2.5 standard in 2009. In response, DEQ prepared an Attainment Plan in 2012 and successfully received a Determination of Attainment with the PM2.5 NAAQS in August 2015 based on 2012-2014 data. The attainment with the NAAQS is the result of collaborative work between DEQ and the community of Klamath Falls, and included consultation with local health agencies and community members as part of a coordinated engagement plan.

## **2.8. Equity Mapping Group**

DEQ has been an active participant in the multi-entity Equity Mapping Group since May 2021. In addition to presenting its work on assessing environmental burden to the group, DEQ has created an inventory of environmental layers available within DEQ and is working with the Portland State University's Population Research Center and Oregon Health Authority to identify the subset of environmental layers that would be appropriate to include in an Oregon-specific Healthy Places Index, which estimates the relative impact of environmental, social, and economic stressors on life expectancy. DEQ expects to continue its active participation and collaboration the Equity Mapping Group under direction from the Environmental Justice Council as part of the expanded environmental justice work authorized by 2022's House Bill 4077.

## **2.9. Diesel PM Grant Completion**

DEQ and Portland State University received a Community-Scale Air Toxics Ambient Monitoring grant from EPA in 2017. The proposal, "Improving Diesel Particulate Matter Exposure for Vulnerable Populations in the Portland Metropolitan Area", was awarded \$466,276 and the project will end March 31, after successfully accomplishing its goals despite the challenges posed by COVID-19 pandemic.

Under the grant proposal, PSU developed a high spatial resolution model of diesel particulate matter in Portland, based on observations of activity and emission factors from marine ships, railways, construction, and distribution centers. PSU further modeled the effect of four policy scenarios on ambient diesel particulate concentrations in the Portland metropolitan area: (i) HB 2007 (2010) compliance; (ii) HB 2007 + 20%, 40% 80% electrification; (iii) clean construction (Tier IV engine requirements for construction equipment); and (iv) commercial marine hoteling electrification. PSU, with feedback from community partners including Neighbors for Clean Air, Verde, Unite Oregon, and Multnomah County created an [interactive visualization tool](#) to make the scenario modeling results more accessible. Verde and Unite Oregon, two community-based organizations with missions centering environmental justice and equity, will be training their youth leadership cohort on this tool to enable them to reach and inform their communities about the impacts of diesel emissions and alternative for reducing emissions.

## **2.10. EPA's Enhanced Air Quality Monitoring in Communities Competitive Grant Opportunity**

DEQ recently submitted a grant proposal to EPA, entitled "Data to Action: Building a collaborative community framework for cleaner air". The proposal calls for working collaboratively with neighborhood associations, clean air advocacy groups, tribes, universities, and local and state agencies to develop a framework for engaging with communities to monitor local air quality and ensuring communities can use this monitoring data to inform actions that improve local air quality. This framework would then be used to monitor PM<sub>2.5</sub> and diesel particulate matter in four communities over the grant period.

## **2.11. Air Pollution Burden Tool**

DEQ's Air Quality data analysis team has completed a preliminary disproportionate burden analysis for PM<sub>2.5</sub> exposure, cancer risk from (known) carcinogenic air toxins as well as cancer risk from diesel particulate matter. Data show that Black and Asian communities have disproportionately higher exposure to PM<sub>2.5</sub> (6.2  $\mu\text{g}/\text{m}^3$  PM<sub>2.5</sub> vs a state average of 5.8  $\mu\text{g}/\text{m}^3$ ) and cancer risk from diesel PM (6.1 excess cancer cases/million for Black Oregonians; 5.4 excess cancer cases for Asian Oregonians vs. a state-wide average of 3.8 excess cancer cases).

The team has developed an interactive tool that will allow people to explore and understand the pollution burdens across the state. The team is seeking internal feedback on the tool in April, and external feedback in the summer, before finalizing the tool.

### **3. Land Quality Division**

#### **3.1. Hazardous Waste Program Receives Federal Reauthorization**

DEQ's Hazardous Waste Program received a revision authorization as published in the Federal Register (March 10, 2022 Oregon). The program first received full authorization on Jan. 30, 1986, and continued reauthorization allows DEQ to operate the Hazardous Waste Program for the state, 19 state-adopted federal hazardous waste regulations.

As authorized, the state implements and enforces its own regulations "in lieu of" the federal regulations using state citations versus federal citations. Authorized programs are required to be as stringent as the federal program, which creates a national consistency. Authorized states can also make their regulations more stringent such as requiring annual reporting and fee payment or be broader in scope such as regulating more entities. EPA maintains its oversight authorities, including authority to conduct inspections, require monitoring, tests, analyses, reports, enforce regulatory requirements, suspend or revoke permits, and take enforcement actions regardless of whether Oregon has taken its own actions.

### **4. Water Quality Division**

#### **4.1. Klamath TMDL Litigation**

The Temperature TMDL for the Lost River and Klamath River (below Upper Klamath Lake) has been remanded to DEQ by the Marion County Circuit Court. The court found that DEQ did not have authority to assign water quality improvement obligations to "responsible persons" and that DEQ did not have authority to base TMDL load allocations in order to meet water quality standards at the border with California. DEQ is reviewing the decision and considering next steps to address the opinion.

#### **4.2. Klamath River Renewal Corporation Removal of PacifiCorp Dams on the Klamath River in Oregon and California**

The Federal Energy Regulatory Commission (FERC) regulates larger hydroelectric facilities. FERC also must approve decommissioning (removal) of such facilities. PacifiCorp owns and

operates four facilities on the Klamath River in Oregon and California under a FERC license. PacifiCorp has agreed with partner entities to transfer its facilities to a third party – the Klamath River Renewal Corporation, which will decommission and remove these four dams in the largest dam removal project in the United States. FERC has issued a draft decision, proposing to approve the removal, and is currently accepting public comments on the project. The State of Oregon, acting through DEQ, ODFW, and OWRD is a partner in this project along with the State of California.

### **4.3. Washington Fish Consumption Standards**

EPA has issued public notice of its intent to readopt the protective human health criteria for fish consumption that was disapproved by EPA in 2016. This action, if finalized, would put Washington on par with Oregon basing water quality criteria on a fish consumption rate of 175 grams per day.

### **4.4. Capital Chronicle Article Comparing Water Quality in Different States**

On March 23, the Oregon Capital Chronical published an article with the headline "Oregon has most miles of polluted or 'impaired' waterways nationwide." The article cited a report by a D.C.-based organization – the Environmental Integrity Project – on the year of the 50<sup>th</sup> anniversary of the federal Clean Water Act. At the beginning of the EIP Report it states that "[i]t is important to keep in mind that in some cases, states reporting higher levels of impairment may actually be doing a better job of monitoring waterways or are using more stringent criteria to assess water quality." *EIP Report at page 5*. The EIP Report goes on to note that, in relative terms, Oregon assesses a much higher proportion of its rivers and streams than most states (hence more river miles), and includes more seasonal waters and lakes (which may have higher frequency of impairment, particularly for temperature). Finally, most of the impairments in Oregon (74 percent) are because of waterways that are too warm for fish due to climate change. *EIP Report at page 18*. The Capital Chronicle did not contact DEQ in advance of publication to examine the facts about the status of water quality in Oregon's rivers and streams in more detail.

## **5. Eastern Region**

### **5.1. Chemical Waste Management Proposed Hazardous Waste Permit Renewal (Gilliam County)**

Chemical Waste Management of the Northwest, also known as CWM, notified DEQ on March 10, 2022, that it plans to submit a hazardous waste permit renewal application. The permit would allow CWM to continue operating a hazardous waste treatment, storage and disposal facility, including a hazardous waste landfill, under the limitations and conditions of the permit. CWM is Oregon's only hazardous waste landfill and is located outside Arlington, in Gilliam County.



CWM will host a public information meeting April 13 in Arlington prior to submitting its permit renewal application to DEQ. Details of the public meeting are included in [CWM's public notice](#). DEQ staff will attend the meeting and be available for questions about DEQ's permitting process. After DEQ receives the permit renewal application from CWM, DEQ will make the application available online for public review and will evaluate it for completeness. Within 60 days of receiving the application, DEQ must determine whether the application is complete or if CWM must submit additional information.

If DEQ determines the application is complete, DEQ will begin drafting a proposed permit renewal. DEQ will make the draft permit available for public review and will host a public hearing to accept verbal and written comments on the conditions of the draft permit. DEQ will review and respond to all comments received by the comment deadline and may revise the draft permit based on comments. Once DEQ has evaluated the draft permit for all federal and state requirements, DEQ will bring a recommendation to EQC for action on the permit renewal. DEQ maintains a specific webpage for the [regulation of CWM on DEQ's website](#).

## **5.2. The Lower Umatilla Groundwater Management Area (LUBGWMA)**

DEQ continues to work with a range of partners on efforts to address long-term groundwater contamination with nitrates in portions of Umatilla and Morrow counties. The Lower Umatilla Basin Groundwater Management Area (LUBGWMA) was established in 1990 due to elevated concentrations of nitrate-nitrogen in groundwater. While nitrate concentrations have improved in some areas, they are increasing in others. The Local Area Advisory Committee finalized a second action plan for this effort in October 2020, and DEQ also continues to work directly with particular sources to ensure that their land application operations are consistent with the larger effort to address threats to public health in this area.

## **6. Northwest Region**

### **6.1. Bradford Island (Bonneville Dam) Listing Under the Federal Superfund Program**

On March 17, 2022, the U.S. Environmental Protection Agency added Bradford Island to the National Priorities List, making it a federal Superfund site. The listing comes after DEQ, Washington Department of Ecology and the Yakama Nation wrote joint messages in 2019 and 2021 to the EPA seeking to have the site placed on the National Priorities List.

DEQ, Yakama Nation, Washington Department of Ecology, and others have been working for years with the U.S. Army Corps of Engineers, who operate the site, to clean up Bradford Island, but adequate progress has not been made in a timely manner. Listing Bradford Island as an EPA

Superfund site will help provide consistent federal funding and other requirements that are expected to re-energize cleanup of the site.

## **6.2. NEXT Renewable Fuel (Clatskanie)**

NEXT Renewable Fuels, Inc. is proposing to construct a renewable diesel, renewable naphtha, and renewable jet fuel manufacturing facility at the Port of Columbia County's Port Westward Industrial Park in Clatskanie.

The proposed facility will receive and process recycled organic materials and raw oil feedstocks including used cooking oil, vegetable oils and animal fats to produce renewable fuel products that work just like their petroleum-based equivalents. NEXT Renewable Fuels expects to produce 37,500 barrels (1.58 million gallons) a day at start-up, and grow to more than 50,000 barrels (2.1 million gallons) a day at full capacity. Renewable fuel products will be shipped offsite via barge, pipelines, trucks, and railcars, depending on market conditions.

NEXT Renewable Fuels must obtain DEQ air and water quality permits. DEQ put the facility's draft air quality permit out on public notice on March 25. DEQ will hold a virtual public hearing on April 27 and the comment period will close on May 26.

NEXT Renewable Fuels has also applied for a 401 Water Quality Certification as part of the U.S. Army Corps of Engineers 404 permitting process, and must submit permit applications for a construction stormwater discharge general permit (1200-C), which regulates stormwater runoff to surface waters of the state from construction activities. The facility also is applying for an industrial stormwater discharge general permit (1200-Z), which regulates industrial stormwater discharges to surface waters or to conveyance systems that discharge to surface waters of the state.

## **6.3. PCB Cleanup in North Portland**

Along the railway that runs between an industrial area and Cathedral Park just north of the St. Johns Bridge, DEQ is addressing polychlorinated biphenyl, or PCB, contamination. The City of Portland originally discovered the PCBs in 2011, and DEQ evaluated the property as part of Peninsula Iron Works' Source Control Evaluation. Peninsula Iron Works addressed its source control issues by re-routing its stormwater to the City of Portland system. DEQ issued a Source Control Decision in 2020 determining contamination does not have a pathway to the Willamette River. This work did not include removal of the PCB contamination that remained in the soil along the railway, because concentrations do not pose an unacceptable short-term risk.

Peninsula Iron Works and Union Pacific Railroad have both signed agreements to come into DEQ's Voluntary Cleanup Program. DEQ is also coordinating with the City of Portland as a property owner. DEQ and Oregon Health Authority are working with community members to create appropriate outreach materials to help people walking through the area minimize their exposure.

DEQ is using funding from the U.S. Environmental Protection Agency's Brownfield Program to collect additional soil data. DEQ will host a meeting on April 7 to gather input from the community on how they use that part of the park to inform the soil sampling plan. DEQ must use this funding before June 30, and intends to present results to the community mid-summer.

## **7. Western Region**

### **7.1. J.H. Baxter Plant (Eugene)**

In 2021, Oregon Department of Environmental Quality required J.H. Baxter & Co., owner of a wood treatment facility in Eugene, to collect soil samples in residential yards to determine if contaminants from the company's plant have accumulated in the neighborhood. The sampling took place in late 2021, and initial sampling showed elevated levels of dioxins in soil at several residences near the JH Baxter plant. Three of those residences were prioritized for expedited cleanups. The plans for cleaning up the residential properties with elevated dioxin levels is being developed under DEQ's Orphan Site Program, with projects expected to begin by early summer.

DEQ also performed sampling at Trainsong. DEQ continues to work with the City of Eugene to determine next steps for the park property, and DEQ is coordinating with EPA to refine sampling plans for additional areas near the facility.

In late January, J.H. Baxter notified DEQ that the facility would be closing and the company did not have the resources to perform the required cleanup work. DEQ's Orphan Site Program will coordinate with EPA to ensure the priority cleanups are performed, with additional resource discussions needed.