

**Date:** Nov. 16, 2021

**To:** Environmental Quality Commission

**From:** Richard Whitman, Director

**Subject:** Item K: Director's Report (Informational)  
Nov. 17-18, 2021, EQC meeting

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

### **1.1. Diversity, Equity and Inclusion**

DEQ's new Diversity, Equity and Inclusion (DEI) Council will meet on Friday of this week to discuss its charter and ground rules, and to talk with DEQ's DEI consultants (Engage to Change) about priorities for DEI work in the agency. DEQ also has hired a DEI Coordinator, Natalie Nava, who will start work in mid-December.

As we transition to new and sustained ways of improving diversity, equity and inclusion at DEQ, I want to acknowledge the substantial contributions of the DEI Restructuring Team over the last year to helping move this work forward. The Restructuring Team, made up of a dedicated group of volunteers, has spent countless hours researching how to best launch DEI work in organizations like DEQ, including developing a thorough, transparent and inclusive process for creating the initial membership of the new DEI Council, a draft charter, best practices, and helping with the selection of expert consultants. The Restructuring Team members are: Blair Adams; Dana Bailey; Ximena Cruz Cuevas; Shannon Davis; Lauren Dimock; Marie-Helene Diodati; Lydia Emer; Sanne Steinstra, Jamila Thompson, Heather Kell, Ann Farris, and Leela Yellesetty. Carrie Adams, who is no longer with DEQ, also worked as part of the team. Thank you all so much for making DEQ a welcoming place for everyone to contribute to our mission of protecting Oregon communities and our environment.

Another team that I want to acknowledge is the group that helped with the recruitment and selection of our fantastic DEI Coordinator, Natalie Nava. This group included some members of the Restructuring Team – Blair Adams, Ximena Cruz Cuevas, Lydia Emer, and Heather Kell, as well as several others: Connie Dou, Oscar Orejel, and Lynda Viray (along with some help at the

end from Shamal Karan, a DEI Council member). Again, these individuals contributed hundreds of hours of time to getting a wonderful person to help us all engage in DEI work. I learned a lot from this team, and from the great applicants we talked to as part of the hiring process.

DEQ is ready to really roll up its collective sleeves and work together to make our organization a welcoming place where everyone feels that they have a voice in carrying out our mission. Thank you, Restructuring Team and the DEI Coordinator recruiting team!

## **1.2. Environmental Justice**

Welcoming diversity at DEQ, and changing how we do our work to be more inclusive and to consider equity, is directly related to changes happening in Oregon and across our nation. Incorporating environmental justice into environmental protection is not new, but we are seeing a renewed commitment to justice at both the federal and at the state level. I am not going to repeat prior presentations to the commission about environmental justice, but I do want to report on some significant developments in Congress and at EPA, as well as to focus attention on important actions that the Oregon legislature took in the 2021 session that will push DEQ forward on this front.

First, at the federal level, the infrastructure bill just approved by Congress and signed by the President includes significant funding for EPA to support environmental justice. A portion of this funding, \$100 million, is targeted to states that are implementing federal environmental programs (like DEQ). We do not have specifics, yet, about how these resources will be allocated, but it is likely that EPA will fund (for the first time in quite a while) a state environmental justice grant program. This funding is in addition to other resources for community capacity to engage in environmental justice work, which is also an important part of our effort.

Separately, EPA has begun to be more active in commenting on the environmental justice impacts of state regulatory decisions. In response, many states are urging EPA to issue clear, national, guidance on its expectations for federal environmental programs that are delegated to states. Such guidance, under Title VI of the federal Civil Rights Act, has been contemplated in prior administrations but never issued by EPA.

Here in Oregon, there were two state legislative actions earlier this year that touch directly on environmental justice. In HB 2167, the legislature directed agencies to include a Racial Equity Impact Statement (REIS) for proposed budget changes. The REIS must be developed in consultation with Oregon's Racial Justice Council and other community partners. The REIS

must describe the impact of programs, policies, and budget modifications on Oregonians who are Black, Indigenous, Latinx/a/o, Asian, Pacific Islander and Tribal communities.

In HB 2993, the legislature required state agencies to include a statement in rulemaking notices regarding how the proposed rule will affect racial equity in Oregon. That new law also requires that rules advisory committees include representation of communities likely to be affected by the rule.

With these changes in state law, and increasing federal attention on environmental justice, DEQ needs to improve its capacity for understanding how to identify and predict disparate impacts of a variety of types of actions. The EJ workgroup that presented to the last EQC meeting is an important part of this effort.

### **1.3. The Future of Work @ DEQ**

Oregon state government, led by the Department of Administrative Services (DAS), is developing a framework for agencies to make decisions about what forms work will take as we move through the COVID pandemic. Many workers have continued to work at state facilities, including (but not limited to) our vehicle inspection program staff and managers, as well as our environmental lab staff and managers in Hillsboro. Accounting, front desk staff, and others also have been in the office during past months.

As we go forward, DEQ is reaching out to staff and managers (and our union) to hear from them about what is important to them in terms of where work occurs and how it is carried out. With this information, along with policy from DAS, we will start to make decisions about the next phase(s) of work at DEQ. In addition to conferring with other Oregon agencies, we also are in communication with EPA and other states about their approaches.

### **1.4. Implementation Administrator**

Lauri Aunan is retiring from DEQ at the end of this year after serving as our Implementation Administrator and (more recently) as the Interim Eastern Region Administrator. I have decided not to fill the Implementation Administrator position at this time. This position was never approved by the legislature as part of DEQ's budget, and the purpose of the position – to improve coordination between DEQ Headquarters and DEQ regions, has largely been accomplished thanks to Lauri's efforts and the ongoing efforts of DEQ's headquarters administrators and regional administrators. DEQ's leadership will continue to watch how well

we are doing at coordination, and we will not hesitate to come back to some form of this work if it becomes necessary.

## **2. Air Quality Division**

### **2.1. NESCAUM Woodstove Certification Task Force**

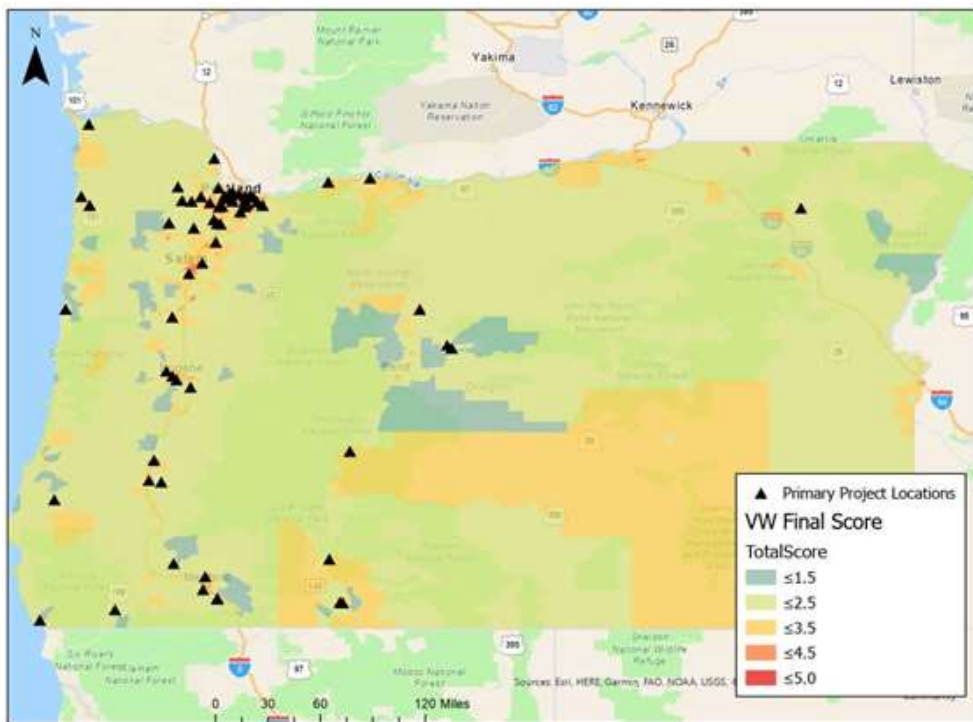
Staff in DEQ's Air Quality Planning Program are participating in a Residential Heating Task Force being led by the Northeast States for Coordinated Air Use Management. This task force is looking into significant issues with EPA's wood stove certification program - including inadequate test methods, testing report reviews, and laboratory certification oversight. These issues are likely allowing numerous wood stoves to be certified by EPA that are not actually attaining emissions reductions expected from DEQ's Heat Smart Program implementation. The task force will continue to work on reviewing data to determine appliances that are suitable for change-out programs; reviewing EPA's certification program; advocating for better test methods; and improving EPA's emission factors for various wood heaters. Recently, EPA's Office of Inspector General also provided notice that they would begin evaluating EPA's oversight of the testing and certification program for residential wood heaters. Finding solutions to decrease wood heater emissions is important for state-wide health; especially as EPA considers lowering the National Ambient Air Quality standards for Particulate Matter.

### **2.2. Regional Haze State Implementation Plan**

The comment period on DEQ's 2018–2028 Regional Haze Plan closed November 1. DEQ had extended the public comment period by one month in response to a public request. Hundreds of members of the public commented, as did the National Park Service, EPA Region 10, several organizations, and two regulated facilities. DEQ staff are currently working on responses to comments and revisions to the Regional Haze Plan. In the Regional Haze Plan, DEQ reports on current visibility at Class 1 wilderness areas and national parks, progress in the last five years and projected visibility in 2028 based on regional-scale modeling. We also analyze stationary source emissions of haze-forming pollutants and describe the evaluative process used to identify reasonable controls of those emissions. The plan also includes DEQ's long-term strategy for reducing haze pollutants from stationary, area and mobile sources and compare the expected outcomes of those strategies to visibility goals for 2028. We look forward to presenting the plan to EQC in early 2022.

### 2.3. Diesel Emissions Mitigation Grants

DEQ recently closed the application period for \$8 million in incentive funding during the 2021 round of our Diesel Emissions Mitigation Grant Program. After a three-month open solicitation, we received 71 applications for the retrofit, repower, and replacement of older, more polluting diesel equipment in Oregon. The total amount requested across all categories of equipment statewide was more than \$53 million. The grant program is heavily oversubscribed, showing a clear demand for incentive funding to reduce diesel emissions. The map below shows the distribution of project applications across the state.



Grant applications proposed a diverse array of projects included upgrading heavy-duty diesel trucks with diesel particulate filters, installing new cleaner-burning engines in tugboats, electrifying locomotive freight switchers, and purchasing new electric school buses. DEQ will make final grant award decisions on December 1. During the first quarter of 2022, DEQ will open the next round of grant funding for an additional \$8 million.

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

#### **3.1. Hazardous Waste Program: Safer Choice Award**

The Toxics Use Reduction Program developed two innovative projects to encourage the use of safer cleaning products and assist businesses to select products with EPA's Safer Choice certification label. This work is funded by an EPA Pollution Prevention grant. The project implementation is in partnership with the Pollution Prevention Resource Center staff who provide training and Oregon Sea Grant staff through the Oregon Applied Sustainability Experience internship program. EPA awarded DEQ a *2021 Safer Choice Partner of the Year Award* for the Safer Choice training and label certification projects. Recently, EPA provided additional funding to continue and expand the label certification project in 2022, and to initiate a regional Safer Choice consortium made up of retailers and manufacturers who support the Safer Choice program.

#### **3.2. Recycling Modernization Act Update (Senate Bill 582)**

The 2021 Oregon Legislature passed a law that will transform recycling in Oregon – the Plastic Pollution and Recycling Modernization Act. This law creates an improved system for responsibly managing packaging, printed paper and food service ware that is one of the first in the country. The new system will build on the parts of Oregon's existing recycling programs that work well, and fill in the gaps where needed. The Recycling Modernization Act includes elements of a framework called extended producer responsibility, or EPR. It requires producers of packaging and paper products to be accountable for responsible management of their products, largely through collective participation in Producer Responsibility Organizations. As a shared responsibility model, it also places new requirements on local governments and recycling processors to help ensure environmentally and socially beneficial recycling programs. The new system helps conserve resources, protects the environment, and enhances well-being for everyone in Oregon, as well as for people beyond our state's borders who are impacted by the materials we use and recycle here.

The law becomes effective January 2022, and recycling program changes will start July 2025. DEQ is planning implementation, and two important activities are already underway:

- The Truth in Labeling Task Force is a legislative task force charged with studying misleading or confusing claims regarding recyclability and recommending legislation to the Legislature by June 1, 2022. Applications closed in October, and appointments will be announced soon. The Task Force will be staffed by DEQ and will begin meeting in January 2022.

- The Oregon Recycling System Advisory Council is a Governor-appointed council with 17 voting members and two non-voting members of the Legislature that will make recommendations to both DEQ and the Producer Responsibility Organizations on a variety of topics. The Council will meet at least quarterly and will submit a report to the Legislature every two years. Applications are due November 19. DEQ is actively seeking more applications for one small business seat and two seats to represent underserved communities. The Council will start meeting the spring of 2022. More information about time commitment, compensation, and how to apply is available on the DEQ website: [RecyclingAct.Oregon.gov](https://www.deq.or.gov/RecyclingAct.Oregon.gov).

## **4. Water Quality Division**

### **4.1. Onsite Septic Program Development Updates**

The 2021 Legislature provided significant funding in support of two DEQ programs that aim to reduce the environmental and public health impacts associated with failing onsite septic systems.

The affordable loan program, established in 2016 and authorized under ORS 454.770, received \$2 million from the state's General Fund to restart new loan activities that had been suspended in summer 2020 due to insufficient funding. DEQ has executed a new grant agreement with Craft3, a nonprofit community development financial institution that had previously been administering this program. The [Craft3 Loans](#) provide flexible, affordable financing for homeowners to repair or replace their failing septic system. It makes loans accessible to borrowers who may not qualify for traditional loan products – they may not have sufficient credit scores or may have limited or fixed incomes. The program is also available to some small businesses, such as restaurants, convenience stores, and small manufactured home or RV parks. We anticipate that demand for this new funding will be high, and that it will support approximately 100 loans. This program began accepting new applications again Nov. 1, 2021.

The second program is the new Onsite Septic Financial Aid Program. The 2021 Legislature allocated \$15 million in federal American Rescue Plan Act funds to DEQ for evaluations, repairs, or replacements of residential or other onsite septic systems. DEQ's funds are to be distributed as agreements with local governments, agencies, or other qualified institutions to administer grants and loan programs for property owners. DEQ is awaiting distribution of ARPA funds from the Division of Administrative Services as well as associated guidelines and requirements for grant distribution and administration. In the meantime, DEQ is conducting outreach meetings this fall with stakeholders across the state, including counties, to inform

program policy objectives and priorities. While this funding will be available for a wide variety of projects around the state, DEQ is also aware of specific interest from communities impacted by the wildfires of 2020. The next step will be for DEQ to solicit interest in the program through a Request for Information Process early in 2022. Applicants will then have the opportunity to submit formal funding proposals in response to the DEQ's Request for Proposals beginning in the spring 2022.

In addition to these two programs dedicated to fostering onsite septic repair and replacement, the Clean Water State Revolving Fund is now accepting loan applications from nonprofit Community Development Financial Institutions for the specific purpose of lending to individual homeowners for septic repair, replacement or connection to public sewer system. This [new CWSRF loan type](#) was created by Oregon Senate Bill 884 (2019), and rules approved by the commission in early 2021. The program provides low-cost loans and loan forgiveness as another important funding option to help address nonpoint source pollution caused by privately owned failing septic systems, a leading cause of water quality contamination across the state.

## **5. Eastern Region**

### **5.1. Chemical Waste Management: Hazardous waste permit modification (Gilliam County)**

Chemical Waste Management of the Northwest, also known as a CWM, is Oregon's only hazardous waste treatment, storage and disposal facility and is located near Arlington. CWM is proposing to modify its hazardous waste permit to add an additional container storage unit. This is to address a shortage of temporary storage capacity and new contracts recently awarded to the company.

CWM and DEQ issued a request for comments on the proposal and hosted a virtual public information meeting on Oct. 21, 2021, to answer questions. The public comment period closes Nov. 30, 2021.

Following the end of public comment period, DEQ staff will prepare a determination report supporting an agency approval or denial of the requested permit modification. DEQ expects to make a decision in January 2022. If DEQ approves the permit modification, a separate EPA oversight review and comment period would then occur. If EPA concurs with DEQ, CWM would submit a Temporary Authorization to construct the storage area in spring 2022 timeframe.



## **5.2. New Eastern Region Administrator, Shannon Davis**

DEQ selected Shannon Davis as the new Eastern Region Administrator after a highly competitive recruitment this fall. Her first day in the position was November 1. Shannon comes to Eastern Region from DEQ Headquarters, where she led teams in the Materials Management program for over four years.

In addition to her work at DEQ, Shannon has tackled environmental issues for the U.S. Environmental Protection Agency, the state of Arizona and in the halls of Congress. While at EPA, she contributed to national materials management policy development. As director of Arizona DEQ's waste programs and Pima County's air quality program, she focused on both environmental policy development and program implementation. She has also served three elected officials including as chief of staff to a member of the U.S. House of Representatives.

Shannon fills the vacancy left by Linda Hayes-Gorman. Linda announced her retirement last year and has been working on several special projects on a part-time, interim basis. Lauri Aunan, DEQ's implementation administrator, served as interim Eastern Region administrator for the past 15 months.

## **6. Northwest Region**

### **6.1. Armstrong World Industries settlement (St. Helens)**

Industrial activity at this site dates back to 1929 when it was used as a fiberboard plant. Contaminated sediment from the former plant operations is present in Scappoose Bay and poses health threats to humans, fish and wildlife. DEQ has been working with former operators Armstrong World Industries, Owens Corning Fiberglass Corporation, and Kaiser Gypsum Company since the early 2000s. In 2010, all three parties entered into a voluntary cleanup agreement with DEQ to conduct a site investigation and feasibility study.

Kaiser filed for bankruptcy in 2016, delaying work at the site. DEQ filed a bankruptcy claim against Kaiser for cleanup liability, which would require the company to provide funds for the cleanup regardless of its bankruptcy proceedings. In 2017, DEQ reached a \$10.1 million cash settlement with Armstrong and Owens Corning. Armstrong also agreed to complete a portion of the cleanup valued at \$1.4 million. In August 2021, the bankruptcy court approved a \$67 million cash settlement with Kaiser.

On Oct. 14, 2021, DEQ received the final payment of the combined \$77.1 million cash settlement with Kaiser, Armstrong, and Owens Corning. This is the largest settlement for a single site in the history of DEQ Cleanup Program. The combined settlement will fund cleanup and restoration of over 100 acres of wetland adjacent to Scappoose Bay. DEQ estimates it will take about five years to get to a final cleanup plan, and five more years to begin the cleanup work.

## **6.2. Astoria Area-Wide Petroleum Site (Astoria)**

The Astoria Area-Wide Petroleum Site consists of properties adjacent to the Columbia River and Youngs Bay. Site operations have included manufacturing, automotive service stations, bulk fuel storage and Port of Astoria facilities. DEQ has found petroleum contamination in soil and groundwater.

On Nov. 1, 2021, DEQ put out for public comment the proposed agreement to clean up Area of Concern 4 at this site in accordance with the 2019 Record of Decision. The upland area of AOC4 includes the former Mobil/Niemi Oil Bulk Plant, several petroleum distribution pipelines, a Port of Astoria maintenance shop and former Port vehicle service underground storage tank, and portions of former steelworks and furniture manufacturing facilities. The Port currently has offices, equipment storage and maintenance facilities on the upland portion of AOC4, as well as several businesses. AOC4 extends into the Columbia River and includes the terminal portion of Slip 2 where petroleum contamination discharges to the river resulting in a sheen.

The public comment period closes on Dec.1, 2021 at which time DEQ will evaluate all comments in anticipation of a final agreement that will guide next steps on the remedy.

## **6.3. Herbert Malarkey Roofing Enforcement (Portland)**

Malarkey Roofing manufactures roofing materials at a large facility in North Portland near the Kenton neighborhood. In 2009, Malarkey modified one of its emissions units, installing a new burner, but did not notify DEQ. DEQ does regular site inspections at Malarkey; however, the modification Malarkey made may not have been visible or apparent.

DEQ inspected Malarkey in May 2018. In September 2018, Malarkey notified DEQ that its formaldehyde emissions may have been higher than previously thought and Malarkey confirmed the elevated emissions through source testing in 2019. Malarkey installed controls in 2020 and subsequent source testing confirmed the controls are at least 96 percent effective at controlling emissions.

The uncontrolled emissions from the new burner Malarkey installed included formaldehyde, which is a suspected carcinogen. In large amounts, formaldehyde can cause other serious health effects such as burning sensation in the eyes, nose and throat as well as nausea and skin irritation. Now that Malarkey has installed pollution controls, the risk to public health is low. However, Malarkey's failure to notify DEQ of the installation of a new emissions unit, and lack of controls over the period up to 2020 has resulted in a large civil penalty for the company of 2.1 million, much of which is the economic benefit to the company of avoiding the costs of controls over the period.

DEQ has reached out to the Kenton Neighborhood Association to provide more information about this enforcement at its November meeting.

#### **6.4 Owens-Brockway (Portland)**

Owens-Brockway Glass Plant #21 produces a variety of glass bottles and jars by recycling post-consumer glass and raw materials. This plant has been operating in Portland since 1956. The following describes four regulatory actions that DEQ is involved in with regard to this facility.

##### *Enforcement*

In June 2021, DEQ issued a \$1 million civil penalty and order to Owens-Brockway for air quality violations, including ongoing exceedances of the total particulate matter and opacity limits in the permit. On Oct. 22, 2021, DEQ signed an agreement with Owens-Brockway resolving the June 2021 enforcement action. The agreement, officially called a Mutual Agreement and Final Order, gives Owens-Brockway two options: install pollution controls or shut down.

There are three main components to the agreement: deadlines, an interim opacity limit and a supplemental environmental project.

- **Deadlines:** By June 30, 2022, Owens-Brockway must either shut down or submit a permit application to install pollution controls. If the company chooses to continue operating past June 30, 2022, it must install the pollution controls within 18 months of DEQ's approval of its application. During those 18 months Owens-Brockway must demonstrate progress toward the design, procurement and installation of controls.
- **Interim opacity limit:** Until controls are installed or the facility is shut down, Owens-Brockway will be subject to an interim opacity limit, in addition to the existing permit limits. Opacity is a surrogate for particulate matter, and the interim limit holds Owens-Brockway accountable for reducing particulate matter emissions until controls are

installed. Violations of the interim opacity limit will result in a penalty of \$18,000 per violation.

- **Supplemental environmental project:** DEQ is requiring that Owens-Brockway spend \$529,404 of its penalty amount on a project that will provide air quality benefits to the surrounding community.

Under the settlement, the penalty amount for Owens-Brockway is reduced to \$661,756. The penalty reduction, as compared to the \$1 million penalty assessed in DEQ's June 2021 notice of civil penalty assessment and order, is primarily due to Owens-Brockway's commitment to install controls.

#### *Cleaner Air Oregon*

Owens-Brockway submitted a revised risk assessment and related documents to DEQ on Sept. 20, 2021. These filings are currently under review.

#### *Regional Haze*

DEQ entered a Stipulated Agreement and Final Order with Owens-Brockway to obtain compliance with Regional Haze regulations on Aug. 9, 2021. Through the order, Owens-Brockway agreed to continue its shut-down of its Furnace A, and to reduce nitrous oxide, sulfur dioxide and particulate matter emissions from its Furnace D by January 2022. Additional reductions are required by July 2025.

#### *Air Quality Permit*

Owens-Brockway submitted a modelling protocol to demonstrate compliance with the short-term National Ambient Air Quality Standards (NAAQS). DEQ is reviewing the protocol, and expects to make a proposed decision later this year, after which there will be a public comment opportunity. This follows a May 2021 U.S. Environmental Protection Agency order requiring DEQ to revise the permit to ensure compliance with particulate matter emission limits. DEQ's decision will address any outcomes from the NAAQS compliance modelling, respond to EPA's May 2021 order, and (if DEQ proposes to approve a draft permit) incorporate compliance requirements from the enforcement Mutual Agreement and Order (see above) as well as the Regional Haze Stipulated Agreement and Final Order executed on August 9, 2021 (see above). If DEQ issues a permit prior to completing the Cleaner Air Oregon process, then DEQ will incorporate any additional requirements via a permit attachment.

## **6.5. PCBs Areawide (Portland)**

DEQ is addressing high levels of PCBs found in soil along the railway that runs between an industrial area and through Cathedral Park, just north of the St. Johns Bridge in the City of Portland.. The city discovered the PCBs in 2011 as part of their Portland Harbor Superfund source control investigations. In 2011, the city requested a risk evaluation, and DEQ conducted a risk screening identifying that additional work was needed, which would begin by bringing Peninsula Iron Works into the Voluntary Cleanup Program.

Peninsula Iron Works is on the opposite side of the railway from Cathedral Park. The facility began operating in 1911 as a foundry, machine and blacksmith shop servicing wood products. Due to Peninsula Iron Works' operations, DEQ evaluated the property as part of Portland Harbor Superfund Site in a 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. While this work controlled potential sources to the Willamette River, it did not address the PCB contamination that remained in the soil along the railway. The PCBs in soil are above occupational risk-based concentrations. In 2014, DEQ stated that "soil remediation is warranted and DEQ anticipates participation by Peninsula Iron Works, City of Portland, Union Pacific Railroad and other adjacent property owners, as needed."

At a meeting about the Portland Harbor Superfund Site in-water remedial design for the Cathedral Park Project Area, the community asked DEQ about the status of the Peninsula Iron Works site. While DEQ issued a Source Control Decision in 2020, DEQ had not done additional work to address the PCBs in the soil, because the area was along a railroad track with likely limited industrial exposure. The community sent a letter to DEQ on Sept. 14, 2021, requesting that we meet with the community to discuss how the agency would address the remaining contamination. DEQ met with community members on Oct. 5, 2021.

Since that meeting, DEQ has sent option letters to Peninsula Iron Works and Union Pacific Railroad to enter the Voluntary Cleanup Program to investigate and remediate the site. DEQ is also engaging the City of Portland as a property owner. DEQ will be working with Oregon Health Authority and the community to create informational materials, and potentially signs, to help people understand what risk exists and what to do about it. Another community meeting is tentatively scheduled for mid-November.

## **6.6. Zenith Energy (Portland)**

DEQ issued a Title V air quality permit in May 2007 for the facility now operated by Zenith Energy. The permit was for a term of five years, with an expiration date of April 1, 2012. As provided in EQC rules, a facility with an air quality permit may continue operating, in compliance with its permit, past the expiration date of the permit if it has submitted a timely and complete permit renewal application. Zenith's predecessor submitted a timely renewal application that DEQ determined was complete in 2021, allowing continued operation under the administratively-extended air quality permit.

In 2021, DEQ notified Zenith that changes in the facility required a new land use compatibility statement from the City of Portland before DEQ could act on the renewal of the Title V permit. DEQ gave Zenith a deadline of September 1, 2021 for the compatibility statement. On Aug. 27, 2021, the city denied Zenith's request. And, on Sept. 1, 2021, DEQ issued a decision proposing to deny Zenith's Title V renewal for failure to obtain a compatibility statement, in conformance with EQC rules. Zenith has appealed both the city's decision (to the Land Use Board of Appeals) and DEQ's decision (to an administrative law judge).

Pursuant to EQC rule, OAR 340-218-0120(1)(c), the permit denial is suspended pending the outcome of a contested case hearing. As a result, Zenith can continue operating under the administratively extended Title V permit.

On Oct. 4, 2021, DEQ issued stormwater construction permit coverage to Zenith related to its proposed construction activities for the handling of renewable fuels. Zenith must also notify the Air Quality program of its proposed construction activity associated with renewable fuels handling before commencing construction.