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HOUSE DISTRICT 53



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May 12, 2023

Leah Feldon
Executive Director
Oregon Environmental Quality Department
4026 Fairview Industrial Dr SE
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Dear Director Feldon:

Following the informational hearing held before the House Committee on Climate, Energy, and Environment on Wednesday, April 26, we are reaching out to you regarding the Agency's new wastewater permits for seafood processors.

The seafood processing industry raised several concerning issues about the new permits, including the Agency's refusal to use its discretion to allow for appropriately sized, site-specific mixing zones for bacteria and the lack of viable technology available for seafood processors to comply with new limits on metals, among others.

Members of the Oregon Legislature expressed concerns about DEQ's permits for seafood processors and communicated specific recommendations to DEQ several times over the last several years. Despite significant engagement from lawmakers, DEQ has yet to provide a clear, workable path forward for these important businesses to comply with the new permit process.

We look forward to specifically addressing the issues below and request a response by June 15, 2023 – before the Oregon legislative session adjourns.

1. DEQ is proposing incredibly stringent limits for metals in seafood processing permits – metals that are not used or manufactured by seafood processors. Seafood processors have stated that there is no technology available for them to comply with limits on metals being imposed in the Individual Permits, which are thousands of times lower than EPA drinking water standards in most cases.

Has DEQ assessed whether any treatment for metals is available and, if so, whether installation of treatment is feasible both financially and with the land available for use by seafood processing facilities in Oregon?

What specific treatment technologies does DEQ expect seafood processors to implement to reduce or eliminate metals in their discharge?

Absent any viable treatment technology for seafood processors, how does DEQ plan to resolve this problem in the seafood processor Individual permits?

2. We understand the metals limits are based on water quality standards developed by DEQ, incorporating human health criteria developed about a decade ago. At the time of development of the human health criteria, it was recognized that subsequent water quality standards may not be achievable in all areas and that variances to those standards could be necessary.

Has DEQ assessed the feasibility of developing variance for metals in waters receiving discharge from seafood processing facilities?

What are the obstacles to developing variances, and how will DEQ work to overcome those obstacles?

3. Seafood processors prevent about 99% of protein residuals from entering wastewater by recycling them through byproduct recovery facilities, where 'waste' becomes useable product. In fact, fully utilizing the resource and preventing byproducts from entering the environment is vital to the sustainability of the industry. DEQ also referenced the facility, BioOregon (aka Pacific Bio Products – Warrenton, LLC), to the Committee, which is a byproduct recovery facility used by processors on the northern Oregon coast. This is one of only two facilities with capacity to process seafood byproducts generated in Oregon. Without byproduct recovery facilities, seafood processors will be forced to dispose of byproducts in landfills and will lose the ability to maximize product recovery.

Consistent with your Agency's goal to promote reuse and recycling, how does DEQ intend to maintain the viability of byproduct recovery plants that divert millions of pounds of waste from landfills every year?

How does DEQ propose seafood processors manage their byproducts without these important recycling facilities?

4. DEQ is enforcing technology-based effluent limits (TBELs) on seafood processors based on effluent limit guidelines (ELGs) developed by EPA in the 1970s. Other than being more than 40 years old, these ELGs were not based on seafood processors in Oregon that process multiple fish species in a given day. We understand EPA expects state Agencies to incorporate its ELGs into permits when directly applicable, but that EPA also directs state Agencies to develop site-specific ELGs when federal ELGs do not adequately characterize the processing effluent.

How has DEQ worked to incorporate actual operations of Oregon seafood processors that process multiple species in a single day in the permit development process?

Why hasn't DEQ developed site-specific TBELs for multispecies seafood processing facilities?

If resources are a constraint for DEQ, how has DEQ worked with the legislature to receive the necessary resources to keep Oregon's seafood processors in business?

5. In 2019, the Coastal Caucus wrote a letter expressing a number of concerns relating to seafood wastewater permits and urged DEQ to make specific changes to the 900-J general permit before finalizing it. The Coastal Caucus even stated that it believed DEQ was misinterpreting Oregon Administrative Rules with respect to the application of the bacterial limits in the permit and strongly urged DEQ to allow for a mixing zone when setting the bacterial limits, as Washington allows.

Will DEQ use its discretion to allow for a mixing zone for bacterial limits in Individual Permits?

Why do other states like Washington allow for bacteria mixing zones but Oregon does not?

We understand the human health and shellfish implications of bacteria, but if DEQ's refusal to provide bacteria mixing zones is based on public policy, who set this policy, and what conversations with the legislature occurred?

6. It is unfortunate that the seafood industry's wastewater permit issues – which DEQ has tools available and discretion to resolve – has again necessitated the intervention of the Oregon State Legislature. It is our

expectation that DEQ enact specific fixes to the significant problems identified by seafood processors. Under current Oregon law, DEQ has many policy tools available to develop fair and equitable individual permits that are scientifically-sound, environmentally protective, and achievable using modern technology. To date, these tools have not been utilized in the new seafood processing permits in Oregon.

Specifically, will DEQ utilize permitting tools such as water quality standards variances, developing multispecies technology based effluent limits, and using site-specific mixing zone boundaries when developing permits for seafood processors?

What additional specific actions is DEQ going to take to ensure that wastewater permits are feasible and achievable for seafood processors? Please include a proposed timeline for taking these actions.

As was stated by Vice Chair Levy during the April 26 hearing, the House Committee on Climate, Energy, and Environment plans to revisit this issue during December 2023 Legislative Days, at which time our expectation is that the seafood processors and DEQ will have better meetings and “come back with smiles on their face.”

Sincerely,



Representative Emerson Levy
House District 53



Representative Mark Owens
House District 60