

Memo

To: Senate Environment and Natural Resources Committee

From: Nancy Bennett, Policy and External Relations Manager
Colin McConnaha, Office of Greenhouse Gas Programs

Date: June 12, 2020

Subject: Response to Questions from June 4, 2020 Committee Meeting



State of Oregon
Department of
Environmental
Quality

www.oregon.gov/DEQ

Following the June 4, 2020 informational session relating to Executive Order 20-04, Senators Findley and Olsen sent DEQ some additional questions. Those questions and DEQ's responses are below.

1. Where is the fuel going to come from for the increased clean fuel standards requirements the report is looking to implement?

DEQ will be studying the volumes and types of low-carbon fuels needed to meet the expanded targets as part of our rulemaking process. The fuel has come and will continue to come from a variety of low-carbon fuel producers here in Oregon, across the US, and throughout the world.

- Biofuel producers have expanded their production, made their processes more efficient, and switched to lower carbon feedstocks. This industry will continue to evolve in those traditional ways and by deploying new techniques like lower carbon agricultural practices and carbon capture and sequestration.
- Several petroleum refineries have converted their fossil diesel production units to produce diesel from renewable feedstocks instead of crude. Still others have the ability to mix renewable feedstocks with crude and “co-process” renewable diesel. These projects represent hundreds of millions of gallons of capacity.
- Renewable natural gas projects targeting the transportation fuel market have been built at landfills, wastewater treatment plants, and dairies and will continue to expand.
- Zero Emission Vehicle regulations, and the Oregon Clean Vehicle Rebates, as well as rapidly growing and diversifying availability of electric vehicles, are significantly increasing the number of electric vehicles in Oregon. And because of SB 1547 (2016), and a variety of other state policies and general market trends in electricity generation, Oregon's electricity will continue to get cleaner, and will generate more credits for CFP.

2. How much of the fuel generated for the clean fuel program comes from Washington, as opposed to being produced in Oregon?

In 2019, roughly 43 million gallons a year of biodiesel and ethanol were produced in Oregon; roughly 42 million gallons of biodiesel and renewable diesel were produced in Washington and imported to Oregon. Oregon imports all fossil fuels as we have no domestic production of fossil fuels.

a. How many new fuel manufacturers have come to Oregon since the LCFS was implemented in 2016?

- Red Rock Biofuels is a sustainable aviation fuel facility currently under construction in Lakeview.
- Threemile Canyon farms has recently completed a renewable natural gas pipeline project at its dairy near Boardman, and will be selling that fuel for transportation uses.
- The City of Portland's Water Bureau is building a renewable natural gas project at the Columbia Wastewater Treatment Plant that will also see the gas injected into the natural gas pipelines to be used as a vehicle fuel.
- Sequential Biodiesel, located in Marion County, has increased production of biodiesel at its facility, as well as reducing the lifecycle GHG emissions from this domestically produced alternative transportation fuel for Oregon's transportation fuels market.
- Pacific Ethanol: located in Morrow County, has similarly increased production of ethanol as well as reducing the lifecycle GHG emissions from the production of this non-fossil fuel used in place of fossil-gasoline.

DEQ is also aware of several other Oregon projects that are in some phase of proposal or development to produce renewable diesel and renewable natural gas. In addition to production facilities, there have been significant investments in new fueling infrastructure to support cleaner fuels such as electric vehicle chargers, propane and natural gas dispensers.

3. What internal actions has the agency done to reduce their own carbon footprint? a. What are the agency's future plans to reduce their carbon footprint?

Like many agencies, DEQ has promoted changes within internal operations to reduce our carbon footprint. Some key initiatives over the past several years include:

- Transitioning Fleet to Electric. Over the past several years, DEQ has been leading the state in upgrading a significant portion of our fleet to electric and hybrid vehicles.
- Reducing vehicle miles traveled by increasing the use of virtual meetings across the state (including prior to the Stay At Home Order). DEQ purchased Mondo Board and teleconferencing equipment in 2018/2019 to support virtual meetings and reduce travel between offices.
- Reduced Building Energy Usage. The DEQ staff initiated a competition within the agency and certain offices to encourage better management and reduce the use of electricity in the office, including collaborating with IT to promote energy-saving tips for staff.
- Reducing energy and water usage at the Lab. The lab is our largest energy user due to its specialized equipment, need for enhanced HVAC systems and 24/7 operations of energy-intensive equipment. The agency is working with DAS on some equipment upgrades and other efforts to reduce energy and water usage.

4. How do we get to 80% below 1990 levels by 2050? For example, in late May, The Economist published an article: "Countries should seize the moment to flatten the climate curve." "Shutting down swathes of the economy has led to huge cuts in greenhouse-gas emissions. In the first week of April, daily emissions worldwide were 17% below what they were last year. The International Energy Agency expects global industrial greenhouse-gas emissions to be about 8% lower in 2020 than they were in 2019, the largest annual drop since the second world war.

Achieving the long-term statewide GHG reduction goals articulated in EO 20-04 will require a broad range of actions, programs and policies at multiple levels of government in Oregon. So, this is not a question for DEQ or any one state agency can answer. That said, EO 20-04 reflects the broad and multi-faceted challenge of deep

reductions in GHG emissions throughout Oregon's economy by directing a wide variety of state agencies to adopt an expansive range of new or strengthened policies. Individually, each of these new policies and programs will incrementally reduce our state's emissions, and collectively can advance Oregon toward the ambitious statewide GHG reduction goals.

a. Do you know what statutory authority there is for the agency to reduce to 80% without any legislative changes?

The Executive Order adopted new statewide goals for reducing statewide greenhouse gas emissions by 80% below 1990 levels. The order then directs DEQ to propose specific policies and programs to the EQC for their consideration. Those programs and policies rely on general authorities of the Environmental Quality Commission already granted by the legislature to regulate air quality – primarily found in Oregon Revised Statutes Chapters 468 and 468A.

Section 1 of DEQ's Preliminary Report published May 15, 2020 included a report evaluating the authority of the Environmental Quality Commission to regulate GHG emissions and require reductions from certain sources of those emissions. That report is available here: www.oregon.gov/deq/ghgp/Pages/ghg-cap-and-reduce.aspx Section 1 details DEQ's understanding of those authorities informed by consultation with the Department of Justice. Specifically it addresses:

- EQC's authority to regulate air pollution, emissions of air contaminants, and to require permits
- EQC's authority to regulate sources that emit air contaminants
- EQC's authority to set greenhouse gas emission caps

b. How does DEQ propose that regulated entities meet the state's ambitious GHG reduction goals, acknowledging that necessary technology and resources do not currently exist?

EO 20-04 first required DEQ to develop a work plan and schedule for the implementation of the directives contained in the order, which we discussed in committee. The policy proposals associated with that work have not yet been made, but will go through the same robust and transparent public engagement processes required for any DEQ program. For example, see the proposed process outlined in Section 2 of the report linked in the preceding answer. Another example of a proposed process by DEQ to implement a directive in EO 20-04 is available on our Clean Fuels Program webpage here: www.oregon.gov/deq/aq/programs/Pages/Clean-Fuels.aspx

Part of that process will be working with regulated entities to ensure that any requirements are implementable.

c. What are the consequences for a regulated entity if it cannot comply with DEQ's rules to implement EO 20-04 (i.e. Fines? Forced closure?)

DEQ has not yet proposed any new policy, regulatory, or enforcement language resulting from the directives in EO 20-04. Enforcement provisions will relate to the specific program under which an entity is regulated.

d. Has there been an economic analysis on how these rules would impact Oregon's economy?

DEQ will be developing policy proposals through the aforementioned public engagement processes as laid out in the report to the Governor's office dated May 15, 2020. Throughout the policy development process and when proposing rules, DEQ intends to work with a third-party entity to evaluate the economic impacts of the cap and reduce programs, specifically. Additionally, consistent with the Oregon

Administrative Procedures Act, DEQ will be evaluating the fiscal impact of any rule proposed in response to EO 20-04. The department will also seek to mitigate those impacts on small businesses to the extent possible.

5. Has DEQ put forward any statutory changes for the 2021 session to further these executive orders? a. If so, can you share that information?

As the policy and rulemaking process unfolds, DEQ will evaluate whether any legislation is needed to complement the newly developing programs. The agency has requested a placeholder as part of the Governor's legislative concept development process to be used if any such legislation is needed. That process is ongoing.

6. In the report, DEQ talks about "trading credits." How would the trading cycle work?

The following answer assumes this question refers to DEQ's preliminary report to the Governor's office, issued May 15, 2020, on the directive in EO 20-04 for DEQ and EQC to "cap and reduce" GHG emissions in certain sectors of Oregon's economy.

In that report, DEQ notes that EQC may have authority to allow for regulated entities to trade (i.e. buy/sell) compliance instruments. We also note that this could improve flexibility for compliance across regulated entities and thereby possibly reduce the cost of the program without necessarily reducing the emissions reductions achieved by the program(s).

With regard to how the program might institute compliance periods (e.g. the periods of time in which regulated entities must ultimately turn in compliance instruments in amounts needed to cover their regulated GHG emissions), DEQ has not proposed any specific compliance periods either in the report or in other materials issued by the agency. Any proposal to institute such a policy would go through the department's public process.

7. What authority does DEQ have to double the LCFS outlined in EO 20-04?

DEQ believes, based on legal advice, that the Environmental Quality Commission has authority under existing law to expand the program's targets. Specifically, ORS 468A.266 authorizes the EQC to develop rules for low carbon fuel standards.

8. Does DEQ have any legal opinion on rules they are planning to implement from the report that they can share with legislators?

The only legal material DEQ has prepared is in the aforementioned Section 1 of our preliminary report to the Governor's office pursuant to the directive in EO 20-04 for DEQ and EQC to "cap and reduce" GHG emissions in certain sectors. See response to question 4.a. above.



Oregon

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MEMORANDUM

To: Members of the Senate Interim Committee on Environment and Natural Resources

From: Christy Splitt, Government Relations Coordinator

Date: June 12, 2020

Re: Follow up from June 4th Committee Meeting

On June 5, 2020, the Oregon Department of Energy received the following questions from Senators Lynn Findley and Alan Olsen. We appreciate their interest in our work to implement Executive Order 20-04 and address recent developments around radioactive waste, and have provided answers below. We look forward to continued conversation on how the Oregon Department of Energy can support the Committee, the Governor, state agencies, and all Oregonians in building a safe, equitable, clean, and sustainable energy future.

1. What statutory authority are you using to implement the changes for appliance efficiency standards?

This authority stems from [ORS 469.261](#). The most relevant pieces read as follows:

- (a) *Notwithstanding ORS 469.233 (Energy efficiency standards), the State Department of Energy shall periodically review the minimum energy efficiency standards specified in ORS 469.233 (Energy efficiency standards).*
- (b) *After the review pursuant to paragraph (a) of this subsection, the Director of the State Department of Energy may adopt rules to update the minimum energy efficiency standards specified in ORS 469.233 if the director determines that the standards need to be updated:*
 - (A) *To promote energy conservation in the state;*
 - (B) *To achieve cost-effectiveness for consumers; or*
 - (C) *Due to federal action or to the outcome of collaborative consultations with manufacturers and the energy departments of other states...*
- (d) *After the review pursuant to paragraph (a) of this subsection, the director may adopt rules to establish new minimum energy efficiency standards if the director determines that new standards are needed...*

(e) If the director adopts rules under paragraph (b) of this subsection to update the minimum energy efficiency standards specified in ORS 469.233 or under paragraph (d) of this subsection to establish new minimum energy efficiency standards:

(A) The rules may not take effect until one year following their adoption by the director; and

(B) The Governor shall cause to be introduced at the next Legislative Assembly a bill to conform the statutory minimum energy efficiency standards to the minimum energy efficiency standards adopted by the director by rule.

a. Has there been any economic analysis on how this will impact Oregonians?

Initial staff analysis found that updating and establishing efficiency standards for the products identified in the Executive Order could, in the year 2025, result in annual savings of \$35,200,000 on utility bills. By 2035, Oregonians could save \$101,200,000 annually on their utility bills.

b. Will these appliance standards be retroactive?

No, they will not be retroactive. In both the initial rulemaking and the related legislative concept, the standards would take effect for items manufactured on or after January 1, 2022 (and January 1, 2023 for high CRI fluorescent lamps). Items manufactured before the effective date could continue to be sold and installed whether or not they met the standards. In addition, [ORS 469.261\(1\)\(e\)](#) requires that rules for new energy efficiency standards and updates to existing standards not take effect until at least one year after the new rules are adopted.

2. What statutory authority are you using to change building codes?

The Oregon Department of Energy cannot change building codes. That duty belongs to the Department of Consumer and Business Services, in consultation with the Oregon Department of Energy, under [ORS 455.511](#). The most relevant pieces of that statute, as applicable to ODOE, read as follows:

The Director of the Department of Consumer and Business Services, after consultation with the State Department of Energy and subject to the approval of the appropriate advisory boards, shall adopt amendments to the state building code under ORS 455.030 (Rulemaking) to increase energy efficiency in buildings that are newly constructed, reconstructed, altered or repaired.

ODOE also serves as a member of the Building Code Division's Construction Industry Energy Board under [ORS 455.492](#). This board "may evaluate and approve or disapprove proposed state building code standards relating to the energy use and energy efficiency aspects of the electrical, structural, prefabricated structure and low-rise residential specialty codes." ([ORS 455.496.](#))

a. Have there been any economic analyses on how this will impact Oregonians?

ODOE encourages the Committee to reach out to BCD on this question. But we would note that DCBS rulemaking procedures require that "notice of proposed rule change shall include a finding by the advisory board that the added cost, if any, is necessary to the health and

safety of the occupants or the public or necessary to conserve scarce resources” so such an analysis appears to be part of BCD’s process ([ORS 455.030](#)).

b. Will these new building code standards be retroactive?

No, building codes generally apply to new construction and elements of a building that are reconstructed, altered, or repaired. ODOE again encourages the Committee to work with BCD on statutory or administrative provisions applicable to this question.

3. What internal efforts has the agency done to reduce their own carbon footprint?

In 2008, ODOE became the first State of Oregon agency to earn EarthWISE certification from Marion County. EarthWISE recognizes business and organizations in the county that are committed to environmentally-friendly practices. ODOE also received the first EarthWISE “Sustainable Organization of the Year” award. Since that time, ODOE has continued to focus on improving office operations and purchasing, conserving energy and water, and reducing waste.

Since moving into the renovated 550 building in late 2016, ODOE has continued and built upon actions to recycle and compost, choose lower emissions alternatives for purchases and travel, and conserve resources. The renovated building – the DAS office building with the lowest energy use intensity – features many sustainable design standards, including a highly insulated envelope, recycled and recyclable carpet tiles, reclaimed wood accents and recycled counters, low VOC products, and LED lights and natural daylighting. In 2019, ODOE, along with the entire 550 Building, were recertified by the EarthWISE program through 2022.

In addition to the EarthWISE certification, we also “walk the talk” in our energy use. We have an 8,300-kilowatt solar array and electric vehicle charging stations. We also have electric and hybrid vehicles that staff use for a majority of ODOE’s trips. We promote alternative transportation by providing employee bike storage and showers and participate in the local Employee Transportation Coordinator program with Salem Cherriots. Along with reducing our energy footprint, we are tackling emissions reductions by participating in the DAS food waste composting program and adopting DAS procurement policies toward more sustainable procurement.

a. What are the agency’s future plans to reduce their carbon footprint?

As a DAS tenant, we continue to partner with the DAS sustainability team, participate in the Interagency Sustainability Network, and provide tenant leadership. This includes supporting implementation of the updated [DAS Statewide Resource Conservation Policy Update \(107-011-010\)](#), piloting new initiatives, and providing technical assistance and expertise on energy issues. Energy staff coordinate with the DAS energy manager to coordinate on building-level energy consumption reporting through ENERGY STAR Portfolio Manager, review energy management strategies and plans, and coordinate on outreach. The 2019 DAS and ODOE Plug Load Strategy Workshop hosted more than 70 people across 34 agencies to support implementation of the [Statewide Plug Load Strategy](#).

4. Does ODOE have any legal opinions on these rulemaking changes that can be shared with legislators?

ODOE does not have legal opinions on these rulemaking changes to share with legislators.

5. Has ODOE put forward any statutory changes for the 2021 session to further these executive orders?

Yes. As required by ORS 469.261, we will be putting forward legislation during the 2021 session to conform statute with our appliance energy efficiency rules, which we are working to adopt by September 1, 2020.

a. If so, can you share that information?

We have attached a summary of the appliance efficiency legislative concept that was previously shared with stakeholders.

6. The radioactive waste disposal at Arlington Landfill was being dumped for three years before anyone noticed or took action. What were the shortfalls in the agency to not identifying this sooner?

Oregon's administrative rules do not require waste generators or disposal facilities (such as Chemical Waste Management in Arlington) to report their disposal activities to ODOE for auditing relative to radioactive material disposal. Oregon Department of Energy enforcement powers are limited under existing rule, and the definitions of radioactive waste are complex. Chemical Waste Management (CWM) leadership has said they misunderstood the rules defining "radioactive material" and thought they were in compliance. Because the Waste Profile forms for the waste erroneously declared it to be exempted from Oregon's rules, ODOE was not alerted to the potential for this waste to violate our rules defining radioactive materials. While ODOE has acted as a resource to clarify questions about the applicability of Oregon's rules defining exempt waste streams and has denied waste streams that exceed our standards through the years, this incident makes it clear that changes are necessary at CWM Arlington, in our outreach to landfills and waste generators state-wide, and to our existing rules around both enforcement and the definition of radioactive waste.

a. What actions have been implemented to make sure something like this does not occur in the future?

- *Corrective Measures at CWM Arlington:* In the Notice of Violation, ODOE required the company to 1) develop a Corrective Action Plan to explain the processes it will put in place to prevent re-occurrence, and 2) conduct a detailed Risk Assessment to evaluate potential past, present, and future risk from the waste that is already buried. CWM has already made some procedural changes to better screen for radioactivity in the wastes, which the company has vetted with agency staff, and the Corrective Action Plan will provide additional details of the steps CWM has taken and will take in the future.
- *Education and Outreach:* In the meantime, to increase understanding of Oregon's rules on radioactive waste disposal, the Oregon Department of Energy sent a notice to all landfills in the state reminding them of regulations prohibiting disposal of radioactive waste in Oregon, encouraging them to contact us with any questions, and providing contact information. Reminder notices will be sent to landfills on an annual basis, and these notices will also include updates and education on any new rules that are developed.

- *Increasing Enforcement Authority:* The Energy Facility Siting Council initiated a rulemaking project late last month to revise OAR 345 Division 29 rules. The agency anticipates that these revisions will offer stronger enforcement options and improve state-wide compliance with existing disposal rules.
- *Defining Radioactive Waste:* In addition to strengthening enforcement provisions and increasing education and outreach, which can be done under existing agency authority, ODOE has identified the need for statutory changes to enable us to work with stakeholders to clarify the highly technical regulations around what is or isn't considered radioactive material subject to the disposal prohibition. The current Division 50 rules were originally adopted in 1981 and new waste streams, such as the one in question at Arlington, were not yet an issue in the way they are today. Legislation is necessary before the agency can move forward with rulemaking on this issue. In anticipation of a legislative effort to address this issue in the 2021 session, staff is exploring potential changes to recommend when the actual rulemaking process can take place.

7. How many internal adjustments in the agency budget, have been shifted to implement these executive orders?

All of the work that ODOE staff is doing as a result of Executive Order 20-04 falls within our existing scope of work and current capacity. The agency has not made internal adjustments to our budget to do this work.



2021 LC 33000-001 Energy Efficiency Standards

Statement of Purpose

This LC would implement Directive 7 of Governor Brown's Executive Order 20-04 by conforming statute, per the process outlined in [ORS 469.261](#), to the equivalent energy efficiency standards for appliances that would be established in rule by the Oregon Department of Energy in 2020 for the purpose of saving Oregonians money, promoting energy conservation in Oregon, reducing energy and water use, reducing greenhouse gas emissions, and aligning West Coast appliance market standards. This LC would also implement housekeeping measures to remove from statute those existing standards that have been preempted by federal standards since originally established in Oregon. This LC would maintain existing statutory authorities for ODOE and would not provide any new agency authority relating to the adoption and implementation of appliance energy efficiency standards.

As directed in Executive Order 20-04, standards to be established by rule and then added to statute include:

- | | |
|------------------------------------|-----------------------------------|
| 1) High CRI fluorescent lamps | 6) Commercial dishwashers |
| 2) Computers and computer monitors | 7) Commercial steam cookers |
| 3) Faucets | 8) Residential ventilating fans |
| 4) Shower heads | 9) Electric storage water heaters |
| 5) Commercial fryers | 10) Portable electric spas |

Statement of Need

While some appliance efficiency standards are set at the federal level, there are also products that do not yet have a national standard and for which a new state standard could achieve meaningful energy and water savings and greenhouse gas reductions. Oregon has periodically enacted appliance efficiency standards as a method of saving consumers money and saving energy. In 2005 Oregon established its first appliance energy efficiency standards for 11 product categories. In 2007 Oregon added six more product categories and in 2013 added three more. Often, federal standards are later modeled after standards that were first enacted at the state level. Once adopted at the federal level, federal standards state standards for those products. Thirteen of the products for which Oregon has established standards have since seen standards adopted by the federal government. Part of this LC would remove from statute the Oregon standards that have been preempted by federal regulations.

Product technology continues to develop. Equipment that is more energy efficient than previous versions across various product categories is available in the market. There has recently been activity among multiple states, on the west coast as well as in other regions, to establish new or updated energy standards for products. California has been the most active state in developing and adopting efficiency standards for appliance categories that are not federally preempted. Washington state has also recently established efficiency standards for a host of products, many modeled after California. Vermont, Colorado, and Hawaii are other states that have also recently adopted energy efficiency standards.

Oregon's standards for appliances have largely been based on similar standards developed for the large west coast market for appliances, but Oregon has not updated its standards or added new categories in over six years. By updating and establishing new state standards, Oregon would increase uniformity of standards across the western market, reduce marketplace confusion, promote energy conservation for Oregon consumers, and provide alignment and harmonization with Washington and California markets.

In ODOE's November 2018 *Report on Improving State Standards for Appliances*, which was written to comply with Executive Order 17-20, Section 4.F., ODOE leveraged existing resources to identify state-specific opportunities for new appliance standards. In particular, ODOE looked at the work of other states, the Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, the Northwest Energy Efficiency Alliance, and the Pacific Coast Collaborative (which includes California, Oregon, Washington, and British Columbia), to provide a high-level review of the Oregon opportunities. ODOE staff coupled this review with outreach to engage stakeholders and industry representatives in discussions about Oregon's process for adopting and reviewing appliance standards. ODOE also reviewed existing research, information, analysis, and methodology, which was modified where appropriate to consider Oregon-specific variables such as emissions rates.

Executive Order 20-04 issued by Governor Kate Brown on March 10, 2020 leveraged ODOE's identification of potential standards and savings for Oregon and recent activity of neighboring jurisdictions to provide a specific list of products for ODOE to establish energy efficiency standards by rule. Oregon law requires that, after ODOE completes rulemaking to establish and update appliance efficiency standards, legislation conforming statute to those standards in statute to the new or modified standards in rule must be introduced in the following Legislative Assembly. Passage of this LC would complete this process.

Appliance standards are an important energy-saving tool as new buildings progressively become more efficient and an increasing share of energy consumption comes from the products and appliances that are "plugged in" or movable, often called the "plug load." Residential and commercial building energy codes have traditionally regulated space conditioning, water heating, and the building envelope, but not appliances that are part of a building's unregulated load. This bill would support energy efficiency and greenhouse gas reductions to address this portion of consumer energy consumption.

External Engagement

ODOE anticipates that external stakeholders with an interest in this LC will include affected product manufacturers, trade organizations, retailers, energy efficiency advocates, environmental advocates, consumer-owned utilities, investor-owned utilities, regional energy efficiency associations, the National Association of State Energy Officials (NASEO), other West Coast/Pacific Coast Collaborative jurisdictions, and local jurisdictions, among others. ODOE is compiling a broad list of stakeholders as

part of the upcoming rulemaking process. ODOE research into state standards opportunities and the outreach that was part of previous 2018 LC development, including multiple stakeholder meetings and conversations, also provides insight into this current LC. Additionally, ODOE will leverage the work and stakeholder engagement of other states that have recently enacted standards. ODOE is just beginning to discuss this specific LC with external organizations, but the concepts and standards in the LC have already had broad industry discussion through the activity of other states.

Fiscal Impact

Establishment of energy efficiency standards in Oregon through the rulemaking discussed above and this LC can be absorbed with existing agency resources. There are minimal additional ongoing resources needed for program maintenance.



Oregon

Kate Brown, Governor

Department of Transportation

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DATE: June 12, 2020

TO: Senate Interim Committee on Environment and Natural Resources

FROM: Lindsay Baker, Assistant Director
Oregon Department of Transportation

SUBJECT: Questions on ODOT Response to Executive Order 20-04

On June 5, 2020 the Oregon Department of Transportation (ODOT) received the following questions from Senators Findley and Olsen. ODOT appreciates the opportunity to further elaborate on ODOT's ongoing climate-related work and steps to implement Governor Brown's Executive Order 20-04.

1. What statutory authority does ODOT have to make the changes that are identified in the report?

The directives identified in EO 20-04 and in ODOT's May 15 report do not require rulemaking or additional/unique statutory authority. ODOT's primary work efforts include: a research study on transportation electrification, and adding consideration of GHG emissions in major funding decisions.

- a. Do you have any legal opinions on these rulemaking changes that you can share?**
No rulemaking is required.

2. With significant highway fund revenue shortfalls in the near future, how will ODOT ensure that revenues spent on GHG initiatives do not decrease critical maintenance and preservation of the transportation system?

ODOT's core mission of preserving and maintaining the transportation system remains unchanged. ODOT, through its Climate Office, will bring climate considerations into all work, including how to reduce carbon emissions and reduce the agency's own carbon footprint in the performance of those services and in the projects we pursue.

3. Has ODOT put forward any concepts for statutory changes for the 2021 session to further these executive orders?

No. ODOT has not put forward any legislative concepts for the 2021 session to further the Executive Order.

- a. If so, can you share that information?**
N/A

4. How will future agency analyses and reports take into account revenue and cost impacts on the current transportation system as a result of the STS implementation?

Implementation efforts may not have costs associated or may result in cost savings. Any costs that are incurred should be compared to the costs of inaction. Information may be tracked broadly on a programmatic scale and support overall performance monitoring and program adjustments. ODOT's regular revenue projections will continue and will account for changes that STS implementation may enable, such as broader transportation electrification. Broader electrification will reduce Highway

Fund revenue as long as the gas tax remains the primary revenue source. The STS includes polices in support of transitioning to a vehicle miles traveled fee and implementation efforts will be supportive of the OReGO program and other pricing options to offset revenue impacts and promote further GHG reductions.

5. What has the agency done to reduce their own carbon footprint?

Over the years, and in line with past Oregon executive orders, ODOT has implemented efforts to conserve building energy use, paper use, and water consumption. We have transitioned some roadway lighting to LED, added more electric vehicles to our fleet, increased our use of recycled materials, and made targeted low- and no-emission multimodal investments.

a. What are the agency's future plans to reduce their carbon footprint?

ODOT is developing an implementation plan for the STS with more details on the specific actions we will pursue over the next five years to reduce carbon from transportation. We will look into ways to reduce carbon emissions from construction and maintenance practices, such as product labeling, higher use of lower carbon materials, cleaner fuels and more EVs, etc. We will also consider how to achieve net-zero transit emissions, how best to align investment programs, identify opportunities to partner with the private sector to enable transportation electrification, and more.

6. What percentage of ODOT's fleet are electric?

ODOT has 791 light-duty vehicles out a total fleet of 2,342 pieces of on-road equipment. Of the 791 light-duty vehicles, 3% (26 vehicles) are electric.

a. How much would it cost ODOT to get their entire fleet to meet the EO reduction levels?

It will likely cost \$38.0M-\$38.5M to convert the remaining 765 light-duty vehicles to electric. Charging infrastructure to support use of these vehicles would require additional investment.

b. How much emissions do ODOT's fleet currently put out?

The carbon footprint of ODOT's entire fleet (all 2,342 pieces of equipment) was estimated at 42,675 Metric tons of CO2 equivalent (MTCO2e) for 2019. This was a reduction in emissions of about 3.5% from the year prior due to increasing use of EVs, CNG, renewable diesel, and biodiesel.

c. How many gallons of fuel does the ODOT fleet burn each year?

On average, ODOT's fuel consumption ranges from 3.2M-3.5M gallons each year across its entire fleet.

7. Does ODOT have any legal opinion on these rulemaking changes that be share with legislators?

No, ODOT is not undertaking any rulemaking efforts at this time and as such has not sought legal opinion on rulemaking.

Please feel free to reach out to me with any additional questions.

Public Utility Commission of Oregon

Responses to questions posed during the Senate Interim Committee on Environment and Natural Resources
June 5, 2020

1. What statutory authority does PUC have to make the changes that are identified in the report? a. Do you have any legal opinion on these rulemaking changes that you can share?

1. The report that the PUC prepared for the Governor's office and presented to the Senate Interim Committee on Environment and Natural Resources is a starting point – and a set of potential directions to prioritize and carry out with stakeholder input and through public processes in the coming months and years. Our long-standing stakeholder engagement and processes will be used to develop and vet proposals, and the Commission's decisions will reflect new directions consistent with our legal authority and responsibility to ensure safe, reliable and affordable utility services.

The Executive Order recognizes the PUC as an independent decision-making body and the PUC is directed to consider the factors and values, consistent with state law, under Section 5. EO 20-04 grants no new authority to the PUC. The legislature has delegated to the PUC broad discretion to establish just and reasonable rates and ensure that utilities' actions are consistent with the public interest. We will consider how EO 20-04 relates to our decisions with each action we take to administer our enabling statutes, which may be found within Chapters 756, 757, 758, 759, 772 and 774 (Oregon Laws).

1a. At this time, the PUC does not have any legal opinions on potential areas for rulemaking identified in the report. Our examination of the EO has focused on its content and our ability to implement it consistent with our existing authority.

2. Has PUC put forward any concepts for statutory changes for the 2021 session to further these executive orders? a. If so, can you share that information?

The PUC is proposing one concept for the 2021 Legislative Session and it does not have any relationship to EO 20-04. The proposal relates to aligning federal and state natural gas pipeline safety civil penalties.

3. What is the agency doing itself to reduce their own carbon footprint? a. What are the agency's future plans to reduce their carbon footprint?

The PUC is committed to a sustainable future and is implementing actions to do our part for Oregon, including implementing several measures to reduce our own carbon footprint.

PUC Sustainability Team and Plan –

The agency has formed a chartered Sustainability Committee that has developed a comprehensive plan that educates staff and encourages practices for today and the future to promote environmental stewardship, support employees, and strive for economic and fiscal sustainability.

Below are some of the efforts and measures the PUC has undertaken to reduce our carbon footprint:

Sustainability Features at the PUC Main Facility – The Beardsley Building –

In an effort to enhance the sustainability of a six-story building in downtown Salem for State of Oregon occupancy, Beardsley Building Development contracted with Advanced Energy Systems to install a rooftop solar array. The solar installation consists of 68 solar modules producing up to 285 watts each. This 19.4 kW PV Power System is monitored by a live solar monitoring web page and tracked through a digital energy meter. During its lifetime, the system will offset 340 tons of CO₂ which is the equivalent to the conservation

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of 7880 trees or 34,590 gallons of gasoline. In addition, the building uses Panorama Slate 20 Window Tint that reduces energy consumption.

Office Equipment, Furnishings and Paper Products –

- The agency purchases energy efficient computers and monitors for staff, agency computers were upgraded in 2017
- Computers are turned off at the end of each day, and lock out after 5 minutes of non-usage to protect system integrity and reduce electric usage
- The agency uses e-mail/e-filings when possible during transactions with stakeholders and the general public to reduce the amount of paper, ink for printers and staff time involved in the communication process
- Agency copiers are ENERGY STAR-rated equipment and the agency has centralized printers with agency program areas, reducing the total number of printers

Lighting –

- Light fixtures utilize timers set to agency operation hours
- The building uses 3-bulb florescent lighting wired to switches allowing staff lighting options that reduce energy use
- Motion detector lights are used in bathrooms and some parking areas to reduce lighting when areas are not in use
- We are engaged in a pilot project to replace florescent lighting with LEDs to achieve additional energy efficiency

Water –

- The agency installed water bottle filling stations on each floor of our building, allowing staff to fill and re-use water bottles, reducing overall water usage and reducing the number of water bottles going into landfills

Product Stewardship –

- We purchase products from Oregon Corrections Enterprise and local businesses whenever possible to support the local economy and on-the-job training for inmates, while also reducing highway congestion and fuel consumption
- We work with state surplus to more efficiently re-cycle, re-use, or discard old or operationally obsolete property

Employee Commuting/Telecommuting –

- We encourage carpooling and use of public transit systems, promote local transit programs and alternative transportation options
- We maintain and provide a free, safe, and secure bicycle storage room equipped with bike racks and security cables which encourages staff to reduce fuel usage and transportation expenses
- We allow staff to telecommute when practicable

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Portland Satellite Office -

We established a Portland satellite office to reduce commutes to and from Salem for staff who live in Portland and surrounding areas. Providing this option for employees reduces fuel usage, promotes job satisfaction and a healthier environment.

4. Does the PUC you have any legal opinion on these rulemaking changes that can be shared with legislators?

No, the PUC does not have any legal opinions on any rulemaking changes related to the report we filed on EO 20-04.

Submitted June 11, 2020 by Robin Freeman, Director of Policy, Public Utility Commission of Oregon