



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Agency Headquarters
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5696
FAX (503) 229-6124
TTY 711

Senator Michael Dembrow, Co-Chair
Representative Khanh Pham, Co-Chair
Joint Committee on Ways and Means
Subcommittee on Natural Resources

Dear Co-Chairs and members of the committee,

On behalf of the Oregon Department of Environmental Quality, thank you for the opportunity to present to you on our agency operations and 2023-25 Governors Recommended Budget. Below you will find comprehensive responses to member questions from the informational hearing on HB 5018, the agency's budget bill.

Please don't hesitate to reach out to me if you have additional questions.

Sincerely,

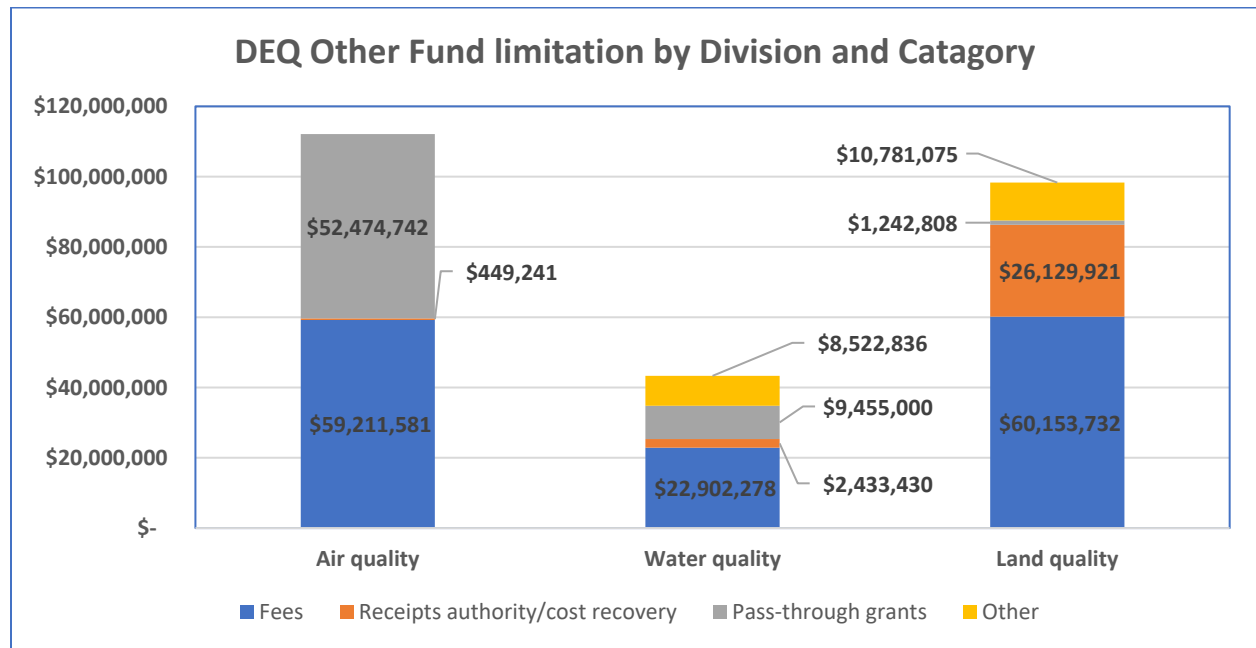
Matt Davis
Interim Policy and External Affairs Manager
Oregon Department of Environmental Quality

Day 1

A breakdown of Other Fund expenditures for each major Division budget. Specifically, fee versus non-fee revenues. (Rep. Owens)

In summary, fees make up the following proportion of program Other Fund budgets:

- Air Quality: 53%
- Water Quality: 53%
- Land Quality: 61%



Summary of Other Fund expenditures by category

	Fees	Cost recovery	Pass Thru/Grants	Other
<i>Air Quality</i>	<ul style="list-style-type: none"> • Permits (Title V, Air Contaminant Discharge Permits, Cleaner Air Oregon, and Greenhouse Gas Reporting) • Vehicle Emissions Certifications • Asbestos Certification • Low Emission Vehicle Reporting 	Small dollar contracts for DEQ providing services for other agencies (e.g. Oregon Department of Agriculture)	EV Rebates, VW grants, MHD Electrification grant	N/A
<i>Water Quality</i>	<ul style="list-style-type: none"> • Permits and certifications (wastewater, stormwater, onsite, 401, Underground Injection Control). • A majority of permitting programs operate under a 60/40 split funding model (60% fee revenue; 40% 	<ul style="list-style-type: none"> • Water Quality Monitoring • Lab Certifications 	Onsite Financial Assistance Program	<ul style="list-style-type: none"> • Clean Water State Revolving Fund • Administrative Funds • Revenue transfers for Drinking

Land Quality

public funds), but a few of the smaller programs (e.g. residential onsite; Wastewater Operator Certification) rely 100% on fee revenue to support activities/services.			Water Source Protection
Permits and certification for Hazardous Waste generators, owner of underground and above ground tanks, solid waste tipping fees, Spills, Solid Waste Orphan, Ballast Water, and Emergency Response.	Cost Recovery for work on cleanup sites.	<ul style="list-style-type: none">• Materials Management Grants to governments and community-based organization• Small dollar payments to other agencies, including the Oregon State Police	Expenditures related cleanup of Industrial Orphan Program sites

Information on exposure to formaldehyde in indoor environments. (Sen. Frederick)

Formaldehyde is classified by the US Department of Health and Human Services as a known carcinogen. The Agency for Toxic Substances and Disease Registry produces summaries on chemicals, detailing health effects and possible routes of exposure. The Formaldehyde summary is available at: <https://www.atsdr.cdc.gov/toxfaqs/tfacts111.pdf>

DEQ does not regulate indoor air quality or otherwise have authority or resources to investigate such exposures. For additional information on health effects and the status of any programs or regulations please refer to:

- The Oregon Occupational Safety and Health Administration for occupational exposures.
- The Oregon Health Authority for non-occupational exposures.

Specific targets for the Water Quality Monitoring KPM measures depicted in the chart on Slide 23 (Rep. Pham)

The targets (in parenthesis) and 2022 reporting year measures are as follows:

- 9a (Percent of monitored stream sites with significantly improving trends in water quality): 8% (20%)
- 9b (Percent of monitored stream sites with significantly declining trends in water quality): 11% (15%)
- 9c (Percent of monitored stream sites with good to excellent water quality): 49% (60%)

A summary on the Port of Morrow enforcement actions. (Rep. Levy)

In 2022, DEQ fined the Port of Morrow a total of \$2.1 million for overapplying wastewater containing nitrogen to agricultural fields in the Lower Umatilla Basin, an area with longstanding groundwater contamination.

The Port of Morrow collects wastewater from food processors, storage facilities and data centers in its industrial park outside Boardman. The port has a DEQ water quality permit that allows it to reuse the nitrogen-rich wastewater for irrigation on nearby farms, but the permit includes limits on how much nitrogen can be applied to the farmland and how much nitrate and moisture can be present in soil prior to applications. The port violated these limits, which is what led to the enforcement action.

DEQ is currently in settlement negotiations with the port regarding the penalty. In addition, DEQ issued a modified permit for the port on November 2, 2022. The permit modification includes more stringent limits to ensure the port's operations do not adversely affect groundwater. Changes include requirements for the port to reduce its nitrogen application during the nongrowing (winter) season, additional wastewater treatment and monitoring, and assessment and cleanup of groundwater contamination from current operations. DEQ continues working with the port on a compliance schedule, which includes milestones for reaching compliance with the permit conditions.

The Port of Morrow is one of many sources contributing to nitrate contamination in the Lower Umatilla Basin Groundwater Management Area. Analysis from DEQ, ODA, and OSU Extension show the primary source of contamination in the area (about 70%) is from chemical fertilizer use on conventional irrigated farmland. Additional contributors are dairy and cattle farms known as Confined Animal Feeding Operations (about 12%), pastures (about 8%) food processing facilities like the Port of Morrow that reuse wastewater to irrigate fields (about 5%), and residential septic systems and other sources (about 5%).

The definition of “Environmental Justice” as its used in the Justice 40 initiative. (Sen. Dembrow)

Justice 40 refers to Executive Order 14008, issued by President Biden on January 25, 2021. Originally launched as a pilot, but since expanded, the initiative requires that certain federal funding streams, known as “covered programs” demonstrate that 40% of all funds benefit “disadvantaged communities.”

“Disadvantaged communities” are broadly defined as those communities underserved, marginalized or disproportionately impacted by pollution. The White House, working with a variety of federal agencies, developed an interactive [Climate and Economic Justice Screening Tool](#) to assist governments and communities in identifying disadvantaged communities. Federal agencies have additional flexibility to define the term for their covered programs.

This tool shows census tracts across the state in a variety urban, suburban and rural landscapes qualify as “disadvantaged communities.” All federally recognized tribes are also considered to be disadvantaged communities.

The Justice 40 initiative applies to federal agencies as they carry out the work of implementing a variety of federal funding programs, including programs newly authorized in the Bipartisanship Infrastructure Law and Inflation Reduction Act.

For the purposes of targeting Community Climate Investments towards Environmental Justice communities DEQ uses the following definition, informed by the legislature's work to define “Environmental Justice Communities:”

“Environmental justice communities” means communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.”

Day 2

Roles and authorities of the Departments of Environmental Quality and Energy with respect to regulation of bulk liquid terminals. (Rep. Holvey)

Under Senate Bill 1567 (2022) DEQ is responsible for developing a program to prevent earthquake damage at major fuel distribution facilities. The facilities covered by this new program in Multnomah, Columbia and Lane County are required to prepare facility specific site assessments and implement damage mitigation plans.

DEQ is directed to consult with the Department of Energy and with the Department of Geology and Mineral Industries in developing that prevention program. SB 1567 also directs the Department of Energy to develop an energy security plan evaluating the state’s ability to recover quickly from physical threats including earthquakes. Both DEQ and ODOE are directed to report results and recommendations to the Legislature in 2024. DEQ, ODOE and DOGAMI are working closely together to ensure our mutual efforts are coordinated and efficient. The link the Fuel Tank Seismic Stability program page is [here](#) for your reference.

Rulemaking and implementation update on the Plastic Pollution and Recycling and Modernization Act. (Sen. Anderson)

The Plastic Pollution and Recycling Modernization Act (SB 582, 2021) updates Oregon’s recycling system by building on local community programs and leveraging the resources of producers of printed paper and packaging. The law lays out a multi-year implementation process that includes research, stakeholder engagement, two rounds of rulemaking, pilot testing, and permitting. Key milestones include:

- First set of Administrative Rules will go out for public comment next month and scheduled to go before the Environmental Quality Commission November 2023. It addresses obligations of the producer responsibility organizations (PROs), local government compensation, and material acceptance lists.
- Survey of local governments for collection needs assessment will be complete in July 2023.
- Research is planned to identify effective methods for reducing contamination from residents and businesses in our commingled recycling stream.
- Second rulemaking process will begin this summer and wrap up in the Fall of 2024. It will address permitting of and fees for commingled recycling processing facilities, living wages and supportive benefits for recycling processing facility workers, covered product exemptions, responsible end market verification, environmental impact assessment standards, and a fee for reuse and other programs to reduce the impact of covered products.
- Study of equity in the state’s recycling system, and the first multifamily needs assessment are due in 2024.
- Program plans from the Producer Responsibility Organizations are due March 31, 2024. After those plans are submitted there will be an extensive public review process.

- On July 1, 2025, producers must join a PRO and start paying fees. At that point, PROs must begin implementing approved plans, including providing funding to local governments and processing facilities, as well as their own operational responsibilities. Local governments will implement changes to collection programs, such as collecting materials on the new statewide list. By July 1 2025 recycling processing facilities will need to have obtained a permit and start meet permitting standards.
- In 2026, local governments must ensure that residents of multi-tenant housing have access to recycling services and DEQ will complete both a litter and marine debris needs assessment and a composability study.

Day 3

Statewide funding reductions in response to status of Oregon's Coastal Nonpoint Pollution Control Program. (Rep. Holvey)

EPA and NOAA have had a long-standing national practice of conditionally-approving state Coastal Nonpoint Pollution Control Program (CNPCP); in essence providing full funding for these programs, subject to conditions requiring improvements and changes to the programs over time. The requirement that a CNPCP be developed by states with federally approved coastal management programs was established by Congress in 1990 under section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). Like many other states, Oregon was in a conditionally approved status until 2015 when EPA and NOAA, in response to Oregon-specific litigation challenging the practice of conditional approvals, determined that Oregon's CNPCP was not fully-approvable. As a result, since federal fiscal year (FFY) 2015, Oregon has been subject to penalty reductions in funding eligibility for the state's Coastal Zone Management Act (CZMA) Section 306 and Clean Water Act (CWA) Section 319 grant programs (administered by DLCD and DEQ, respectively).

For DEQ, the penalty is roughly \$500,000 per FFY (see table below) – which is about 22% of total eligible funding for the 319 grant program. This is equivalent to about 4% of the overall \$12.5M in federal funding that the DEQ WQ program receives each year. The CNPCP/CZARA related penalty to DLCD's CZMA funding has been approximately \$700,000 per FFY. Regardless of the overall percentage, these funds specifically provide valuable pass through funding that we can use to support local partners for NPS and watershed restoration activities.

Over the past several years, DEQ and partner agencies have been working on strategies that aim to address the remaining deficiencies in Oregon's CNPCP, primarily concerning water quality protections from non-point source pollution in lands within the coastal zone. Recent developments concerning the Private Forest Accord and Forest Practices Act rulemaking, as well as other efforts to improve clean water plan implementation and updated interagency Memorandums of Understanding concerning implementation of non-point source pollution controls, show promise for addressing the remaining elements of Oregon's CNPCP that require approval before the full federal funding amounts may be restored.

The various state agencies with CNPCP related responsibilities (DEQ, DLCD, as well as ODF, ODA and others) are actively working with EPA and NOAA to ensure a coordinated approach to resolving issues in a manner that will fully restore Oregon's funding eligibility, with an anticipated schedule of submitting a revised CNPCP for full approval in FFY 2025.

Penalty amounts resulting from CNPCP disapproval:

Year	DEQ 319 grant funding	DLCD CZMA funding
FFY2015	\$631,500 (out of \$2,083,000)	\$598,800 (of \$1,996,600)
FFY2016	\$435,540 (out of \$2,153,000)	\$637,500 (of \$2,125,000)
FFY2017	\$516,000 (out of \$2,227,000)	\$637,500 (of \$2,125,000)
FFY2018	\$509,100 (out of \$2,202,000)	\$696,900 (of \$2,323,000)
FFY2019	\$507,900 (out of \$2,179,000)	\$703,500 (of \$2,345,000)
FFY2020	\$501,300 (out of \$2,272,000)	\$724,500 (of \$2,415,000)
FFY2021	\$531,200	\$739,800
FFY2022	Pending	pending

Inter-agency coordination on non-point source water pollution. (Rep. Holvey)

In recent years DEQ has worked to update memoranda of understanding with both the Department of Forestry and Agriculture in an effort to improve coordination and implementation on non-point source pollution reduction efforts. Specifically:

- Oregon Department of Forestry: Regarding updates to the Memorandum of Understanding between Oregon’s Departments of Forestry and Environmental Quality on protecting water quality on non-federal forestlands. After revisions in consideration of input received from the public, the agencies and the Board of Forestry and Environmental Quality Commission, the MOU was finalized and signed on December 9, 2021 by ODF’s State Forester and DEQ’s Director. The [signed MOU](#) and attachments are posted on DEQ’s Nonpoint Source Program Implementation webpage. In addition, ODF and DEQ prepared a summary of public comments received and the agencies’ responses. The comment summary, responses and full comment set are presented as Attachment B in the [Staff Report](#) prepared for the November 2021 joint meeting of the Board of Forestry and Environmental Quality Commission.
- Oregon Department of Agriculture: Regarding update of the Memorandum of Agreement between Oregon Department of Agriculture and Oregon Department of Environmental Quality on Collaboration on Achieving Water Quality Goals Relating to Agricultural Nonpoint Source Pollution. The final, [signed 2023 MOA](#) and staff reports to the [Environmental Quality Commission](#) and [Board of Agriculture](#) summarizing public input received with responses to comments are posted on the agencies websites. We value the insights for and interest in protecting and improving water quality in Oregon that were shared during the opportunity for public input on the MOA.