March 31, 2020

Jason Minor, Natural Resources Policy Director, Office of the Governor
Senator Betsy Johnson, Co-chair, Ways and Means
Senator Elizabeth Steiner Hayward, Co-chair, Ways and Means
Representative Dan Rayfield, Chair, Ways and Means
Senator Kathleen Taylor, Co-chair, Ways & Means Natural Resource Subcommittee
Representative Jeff Reardon, Co-chair, Ways & Means Natural Resource Subcommittee
Senator Lew Frederick, Ways & Means Natural Resource Subcommittee
Senator Fred Girod, Ways & Means Natural Resource Subcommittee
Representative Paul Holvey, Ways & Means Natural Resource Subcommittee
Representative Cedric Hayden, Ways & Means Natural Resource Subcommittee
Representative Courtney Neron, Ways & Means Natural Resource Subcommittee
Representative Ken Helm, Chair, House Committee on Water
Representative Brad Witt, Chair, House Natural Resources Committee
Representative Karin Power, Chair, House Energy and Environment Committee
900 Court St. N.E.
Salem, Oregon 97301

Kathleen George, Chair, Oregon Environmental Quality Commission
Sam Baraso, Vice-chair, Oregon Environmental Quality Commission
Greg Addington, Commissioner, Oregon Environmental Quality Commission
Molly Kile, Commissioner, Oregon Environmental Quality Commission
Wade Mosby, Commissioner, Oregon Environmental Quality Commission
c/o Oregon Department of Environmental Quality
700 N.E. Multnomah St., Suite 600
Portland, OR 97232-4100

Re: Oregon Department of Environmental Quality One-Year Performance with Consent Judgment on Water Pollution Discharge Permits

Dear Mss. and Messrs.:

We are writing to apprise you of the Oregon Department of Environmental Quality’s (DEQ) progress in issuing timely water pollution discharge permits. As you likely know, Northwest Environmental Advocates and the Northwest Environmental Defense Center sued DEQ over its failure to timely issue administratively-extended permits under the Clean Water Act’s National
Pollutant Elimination Discharge System (NPDES) that DEQ is authorized to administer. NPDES permits are intended to regulate discharges for no more than five years. This case was settled on November 29, 2019 with a 10-year Consent Judgment in which DEQ committed to eliminate and reduce its permit backlog as well as to take specific actions to address the underlying reasons for its inability to issue timely permits, and to report its plans and results to the public.

We recently received a report and briefing from DEQ about its one-year performance of the Consent Judgment. The attached letter provides DEQ with our view of its compliance with that court order and makes many suggestions on how to ensure its ongoing compliance with the order and to restore the integrity of Oregon’s water pollution discharge program. Given the Oregon Legislature’s recent substantial support of improvements to this program and the Oregon Environmental Quality Commission’s critical role in providing oversight and direction to DEQ, we believe that you will find the content of this letter of interest and, frankly, concern.

As the letter is lengthy, here is a very short summary of its contents:

• DEQ is not currently planning on issuing sufficient permits on an annual basis to comply with the court order to eliminate and reduce the NPDES permit backlog;
• DEQ does not appear to have taken any of the steps to which it committed to obtain the data necessary upon which to base new NPDES permits—for example the issuance of data collection protocols, timeframes, guidance, and plans—thereby removing a key barrier to the timely issuance of permits;
• While some steps have been taken to identify subject matter experts within the DEQ permit organization, more needs to be done;
• DEQ has failed to make available to the public the extra-regulatory enforcement actions it has been taking to prop up its failed permit program;
• DEQ’s 2019 annual report to the Commission—and therefore to the public—uses general boilerplate reasons for delay, thereby rendering it virtually unusable to understand whether DEQ has tackled the underlying reasons for its delays in issuing NPDES permits; and
• DEQ has failed to adequately report its lack of action on NPDES permits that have been administratively continued for ten years or more.

In other words, we are not at all confident that the steps that DEQ has taken to date or that it plans to take in the next few years are sufficient to meet either the terms of the Consent Judgment or the needs of the NPDES permitting program. Therefore, we urge you to press DEQ for further information to demonstrate that it has made the kind of significant reforms that are necessary for success.
The Legislature and the Commission have taken actions that reflect the critical role played by the NDPES permitting program in controlling discharges of pollutants to Oregon’s waters. Timely issuance of properly conditioned permits ensures that such discharges do not cause or contribute to violations of the water quality standards that protect public health and aquatic species. In light of the evidence that the agency may not be on a path to achieve this end, we urge you to maintain a high level of oversight over DEQ’s permitting program.

We would be happy to provide any additional information to you upon your request.

Sincerely,

Nina Bell
Executive Director

cc: Richard Whitman, Director, Oregon Department of Environmental Quality
    Dan Opalski, Environmental Protection Agency, Region 10

Attachment: Letter from Lia Comerford, Staff Attorney, Earthrise Law Center to Diane Lloyd, Oregon Department of Justice, Re: NWEA et al. v. DEQ et al., Case No. 17CV10217 – Consent Judgment Year 1 (March 18, 2020), with Ex. A, Annual Report, and Ex. B, Consent Judgment