

# DEQ HAS OREGON IN DIRTY HOT WATER

For more than a decade, Oregon DEQ has failed to come up with an up-to-date permitting system for polluters

Many of Oregon's biggest polluters are allowed to pour wastes into the state's rivers and streams using outdated permits.

The state agency responsible for protecting Oregon's waters, the Department of Environmental Quality (DEQ), has allowed 75 percent of large industrial and municipal plants to discharge wastes despite having expired permits. Some permits haven't been updated for more than two decades, agency documents show.

Many plants are releasing wastes into rivers that already have unhealthy levels of toxic chemicals and bacteria, including many sections of the Willamette. Some municipal wastewater treatment and industrial facilities covered by these permits also contribute to the overheating of rivers, making the waters hostile to salmon.

According to U.S. Environmental Protection Agency records, Oregon is one of the worst states when it comes to updating permits to ensure big polluters are complying with the federal Clean Water Act.

More than 350 large industrial sites and municipal waste plants operate under National Pollution Discharge Elimination System individual permits. Under the federal Clean Water Act, polluters are required to obtain permits written and enforced by DEQ, which administers the federal program.

DEQ records show that 268 of the sites are operating under expired permits, and that more than 20 haven't updated their pollution permit in more than a decade.

DEQ's own consultants put a sharp point on the problem in a 2016 "Recommendations and Implementation Plan." The report recognizes the legal troubles the agency could face as well as the frustrations the permitting program has created for employees.

"The failure to renew permits in a timely fashion may put the environment at risk, inhibit communities in making investments for their future, create potential liabilities and ultimately expose the state to litigation," the report says. "Continued failures to achieve permit renewal goals have also demoralized staff and diminished DEQ's reputation."

Keith Andersen, DEQ special adviser to the director for water program improvement, says the agency has been

working to catch up on its backlog of permits.

Andersen says the backlog of expired pollution permits has grown in part because of upheaval in the agency's leadership and a lack of money to keep pace with the work. He acknowledges that the agency has been falling behind for more than a decade.

"Getting our systems and process figured out is completely doable, and we need to do that," Andersen says.

Documents show DEQ has also sought to avoid confrontations with industrial and municipal waste plants. In a December 2016 letter to state legislators, DEQ admitted that it is hesitant to enforce up-to-date standards if polluters can't afford necessary improvements.

"DEQ has also been reluctant to issue permits at times due to concerns about a community's ability to afford or carry out required facility upgrades," according to the agency's report to the Legislature.

Jon Wilson, a water permit compliance officer, says politics can also play a role when it comes to giving DEQ the budget it needs. "It's absolutely funding and I think that is intentional to some degree," Wilson says of financial shortfalls. He says he personally feels that, at times, the government "denies regulatory agencies adequate funding to make it more difficult for them to enforce the regulations."

Critics of the agency question the ultimate role funding plays in the program's success and say DEQ has simply been letting polluters off the hook for years by not enforcing environmental standards and ducking fights with industry.

"It's an agency that doesn't want to cause people trouble," says Nina Bell, executive director of Northwest Environmental Advocates, a Portland-based nonprofit and one of several groups critical of DEQ's failure to police big polluters.

Doug Quirke, an environmental lawyer and the founder of Eugene-based watchdog organization Oregon Clean Water Action Project, says the agency's inability to enforce clean water standards has required citizens to step up to defend clean water. Quirke files Clean Water Act suits against polluters and posts pollution notices for *Eugene Weekly* to inform citizens of local enforcement actions by DEQ.

"The ideal would be that citizens would not need to do enforcement and that DEQ would take care of all that," Quirke says. "I don't see that happening."

In Springfield, Arclin USA, a resins and chemical manufacturing facility, is operating under a permit that expired in 1999. The longest expired permit is for Columbia Forest Products in Klamath Falls — it has been expired for more than 27 years.

The DEQ grants administrative extensions to facilities without up-to-date permits so that they can continue to operate.

A 2006 report by DEQ to federal regulators found that 67 percent of monitored Oregon rivers violated clean water standards. While the permittees are not the only polluters to these rivers, the lack of updated permits likely means

they are not being held accountable for their share of the pollution.

The Clean Water Act requires these permits be renewed every five years. Meanwhile, water quality standards are supposed to be updated every two to three years. The constant renewal of pollution standards is intended to ensure that polluters and regulators are using the latest available science and technology.

Internal agency documents show DEQ isn't doing that. In the December 2016 letter to Oregon legislators, DEQ admitted that it hasn't always considered existing pollution levels when issuing permits or extending ones already expired. The agency also points out that higher environmental standards would increase costs to businesses and local cities.

DEQ's Andersen says changing environmental standards make it difficult for the agency to keep pace with the permit writing program.

"We don't think it's fair for people to have to guess at what their requirements will be," Andersen says. "It's not fair to have somebody permitted under this temperature standard and then two years later have to meet [a new] temperature standard."

Despite the cost regulations may put on polluters, maintaining the highest environmental standards is the whole point of keeping permits current and the intent of the Clean Water Act.

"When those permits don't get renewed to incorporate new information, in all likelihood those permits are not doing the job they're supposed to do," Northwest Environmental Advocates' Bell says.

In 2015, state lawmakers told DEQ officials they wanted a solution. The agency spent \$250,000 for a consultant's report that calls for reorganizing DEQ staff and hiring more permit writers.

Andersen says DEQ wants to focus on less complicated permits where water standard compliance is likely. He says such a strategy will make it easier to write permits that comply with federal law.

According to Andersen, trying to write permits for industries dumping into the most polluted waterways could slow down the permitting process. "Those are some of the most complicated permits to write, that would take the longest to write, and are usually the ones that get litigated," Andersen says.

Even with the 2017 Legislature underway, DEQ officials have yet to tell lawmakers what it will cost to hire enough people to clear out the backlog of expired pollution permits. Andersen says the agency hopes to present the Legislature a budget request in 2018, after the agency has gathered the necessary information.

"They have claimed that they are getting it in hand year after year, for the last 15 years or so," Bell says. "I question if they have any idea what they are doing." ■

*This story was written as part of the investigative reporting project at the University of Oregon School of Journalism and Communication.*



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