



East Oregonian, File

A composite panorama image Jan. 11, 2022, shows a portion of the Port of Morrow Industrial Park near Boardman.

# Water: ‘They knew they were in violation. I never excused a violation’

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operation flowed year after year onto farmland and onto one of the most nitrate-polluted basins in Oregon — the Lower Umatilla Groundwater Basin.

More than 30 years ago, authorities decided degradation of that water supply had to be arrested. The DEQ in 1997 joined in a regional plan to cut that pollution, with the agency warning that “mandatory” actions might be necessary.

The groundwater contamination instead worsened.

## Broken agreements

The port can only dispose of its nitrogen-rich wastewater under conditions set by the DEQ.

When the port’s permit to do so expired in 2006, the DEQ did what it often does and advised the Port of Morrow to carry on until the state could work up a new permit.

In the ensuing years, the port violated its permit by dumping more polluted water than was legally allowed.

State regulators caught on in 2011, when port officials sought permission to spread even more of the nitrogen-rich wastewater onto area farmland.

Duane Smith, a DEQ water quality specialist assigned to Eastern Oregon, discovered the port had violated its permit 42 times from 2007 through 2009, resulting in thousands of pounds of excess nitrogen being spread over fields on three farms. Agency officials didn’t impose penalties as allowed under the law, but instead negotiated

## WHAT IS NITRATE?

Nitrate is a naturally occurring chemical compound.

**Characteristics:** Colorless, tasteless and odorless.

**Uses:** Commonly used in fertilizers and in explosives.

**Human consumption:** Nitrate occurs naturally at safe levels in some foods and can be in drinking water supplies at levels that pose no health risk.

**Limits:** The federal Environmental Protection Agency set the limit of 10 parts per million for nitrate in drinking water before it becomes unsafe to drink over long periods. Nitrate levels over 10 parts per million may result in serious health defects that can affect all ages, but are especially harmful to infants and pregnant women.

**Health risks:** Research from the National Cancer Institute reports that consuming water with nitrate up to even five parts per million over long periods of time can increase the risk of colon cancer, stomach cancer and several other cancers

a “mutual order and agreement” with the port.

The purpose of such a deal is to give both the DEQ and the port legal cover against lawsuits over the violations, according to Smith, who retired from the agency in 2019.

Such documents “are interim agreements that someone promises to do something and if you do that we’ll hold off on enforcement actions,” he said.

In the agreement signed May 26, 2011, by Gary Neal, the port’s then-executive director, DEQ settled for the port’s promise to create a long-term plan to deal with wastewater during the winter months. The port continued to produce millions of gallons of wastewater from November to February that had to go somewhere, but farm fields were often frozen or had too few crops to absorb the nitrogen-loaded water.

The port also agreed to submit wastewater monitor-

ing reports more frequently to DEQ. The objective was to get the port to obey the restrictions for its wastewater disposal.

One provision accepted by the port was that the DEQ could fine the port up to \$250 a day if it detected new violations.

## Budget cuts and staff reductions

But that agreement took effect as DEQ was weakened by budget cuts and left in a poorer position to enforce terms of the agreement to protect the groundwater.

Legislators in 2011 reduced the department’s \$52 million water quality program by nearly \$6 million, resulting in the loss of 37 positions. The agency’s Pendleton office lost two jobs and testing of DEQ’s network of wells in the region was cut back.

To this day, DEQ hasn’t returned to full strength.

In an email, Laura Gleim, a public affairs specialist at

DEQ, wrote that since 2011, “DEQ has not recovered those jobs and has been backfilling with other program staff as allowed.”

According to the department’s budget requests, DEQ has proposed for years adding water quality staff, including in Eastern Oregon. The requests were turned down by either the governor or the Legislature.

In the meantime, despite its legal promise to clean up, the port carried on polluting.

“When they didn’t meet the timelines there was little support for holding their feet to the fire,” Smith said.

## Violations nearly every winter

Smith said that port officials struggled nearly every winter with disposing of the wastewater flowing from its industrial clients. Miff Devin, the port’s water specialist, said in an email that such problems didn’t arise until 2017, and that port officials only last year learned the subsequent discharges weren’t allowed.

According to Smith, Devin would alert him if the port’s holding ponds were full and say that he needed to release more water. Not doing so would result in the ponds overflowing, ultimately destroying them.

“I said, ‘How can I stop you? If you don’t irrigate, you lose a pond,’” Smith recounted. “Even though they knew they were in violation and knew what was coming, I gave them what advice I could.”

Smith said he would help Devin and others identify fields where dumping excess

nitrogen would have the least impact.

“They knew they were in violation. I never excused a violation,” Smith said.

Smith advised Devin in one 2019 email how to proceed.

“It would be best to plan on a special segment in the report to identify those fields that were irrigated in excess of the winter application limits,” Smith wrote. “I will leave it to you folks to propose a plan that minimizes the impact of movement beyond the root zone.”

Smith said he worked largely alone, in an understaffed office, and he described being in a tough situation politically. Half of the jobs in Morrow County are for the port and its industrial customers, according to the port’s recent economic analysis.

Smith said he suggested to DEQ leaders that the agency either put a moratorium on port expansion until it could get its wastewater under control or stop the port from releasing any water in the winter.

“The Port of Morrow was a big commercial operation and it was difficult to get DEQ management to take a stiff position,” he said.

Smith said he had to be smart enough not to be “asking for outrageous things that you know are never going to be approved.” He could not be seen as “curtailing business,” he said.

“You can’t put people out of work,” Smith said. “You have to go out of your way to get people to comply through agreements, rather than

monetary penalties and not talking to them.”

He said he was told year after year by managers in DEQ’s water quality program and eastern region office to work with the port on complying with wastewater requirements.

But not long after agreeing in 2011 to limit pollution, the port again was found to be spreading excess wastewater to farm fields.

Smith later documented the violations, which occurred from 2012 through 2014. He categorized the port’s actions as the most severe environmental violation — a Class I. That means the violation carries “high probability for significant, direct environmental harm” which could warrant DEQ’s maximum fine of \$25,000 per day.

Smith was surprised at the fine ultimately set by the agency’s Office of Compliance and Enforcement.

“I thought it was going to be a lot higher than what it turned out to be,” he said. “It seemed to me that it could be as much as a million.”

The port authority was fined \$129,000 and paid.

—Oregon Capital Chronicle developed this story in collaboration with the Catalyst Journalism Project at the University of Oregon School of Journalism and Communication. Catalyst brings together investigative reporting and solutions journalism to spark action and response to Oregon’s most perplexing issues. To learn more visit [catalystjournalism.uoregon.edu](http://catalystjournalism.uoregon.edu) or follow the project on Twitter @UO\_catalyst.

# Diesel:

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As essential employees delivering food, Medelez managed to hold onto his employees during the pandemic. Many have worked for the company 20 to 25 years. He said he wants to keep the business going for them and his family, but times are tough.

Medelez truckers do what they can to save fuel, such as turning off their engines while parked and relying on GPS to improve navigation.

“I pray for prices to come down,” Medelez continued. “Even a little bit. We need \$3 to \$3.50 diesel, but even 10, 15, 20 cents would help. I pray for peace in Ukraine.”

Medelez said he feels responsible for everyone depending upon the business, not just employees but growers and grocers.

“I feel that people are put on this Earth to help others,” he concluded. “I want to be able to keep doing that.”

Other local trucking companies’ differing business models have allowed them to adapt to \$5.58 diesel.

Amanda McLaughlin of Bennett Truck Transport, Pendleton said, high fuel prices have had a slight effect, and some customers are careful about taking their units into high-cost states, such as California.

California has the nation’s

costliest diesel, at an average price of \$6.57 per gallon. The state’s fuel tax is 51.1 cents per gallon, but will rise to 53.9 cents on July 1. Oregon’s tax on diesel is relatively low, at 38 cents per gallon.

“It’s insane, but people are compensating to keep products moving to where they need to go,” McLaughlin said.

And in the long run, she explained, producers will have to raise prices, so transport costs will worsen inflation in general.

Diesel prices vary in Pendleton, from below the national average to over it, according to app GasBuddy, which tracks fuel prices.

One reason for diesel’s higher rise than gas is lack of refining capacity, due to closures during the pandemic.

“The U.S. Can’t Make Enough Fuel and There’s No Fix in Sight,” shouted a bold face Bloomberg headline on May 13. “A shrinking fleet of domestic refineries is producing a greater share of the world’s gasoline and diesel, setting the stage for a supply crisis,” the subhead read.

“More than 1 million barrels a day of the country’s oil refining capacity — or about 5% overall — has shut since the beginning of the pandemic,” Bloomberg reported. “Elsewhere in the world, capacity has shrunk by 2.13 million additional barrels a day, energy consultancy Turner, Mason & Co. estimates.”

# History:

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Arizona has had four women as governor, a record.

While a trio of candidates for the top office of any state may be a national first, Nebraska was the first state where a woman defeated another woman for governor, back in 1986. Republican Kay Orr, the state treasurer, defeated Democrat Helen Boosalis, a former mayor of the state capital of Lincoln.

Among those who helped get Orr elected was Denny Miles, who took a leave from the office of Gov. Vic Atiyeh — the most recent Republican to hold the office, from 1979 to 1987 — to help prepare Orr for debates with her opponent. Miles said Orr offered him a job in her new administration, but he declined. Miles did help David Karnes, who was Orr’s surprise appointee to the U.S. Senate vacancy resulting from the death of Ed Zorinsky in 1987, but returned to Oregon.

## Kotek: Legislative leader aims higher

Tina Kotek of Portland emerged from a record field of 15 candidates to win the Democratic nomination in Tuesday’s primary.

Kotek, 55, was a human services advocate before she won a North Portland seat in the Oregon House in 2006.

Kotek resigned earlier this year after 15 years in the House, a record nine

of them as its speaker. She would be only the second former legislative presiding officer since the mid-1950s to become governor, after Democrat John Kitzhaber — a former Oregon Senate president — did it in 1994.

The most recent House speaker to become governor was John Hall, a Republican from Portland who was thrust into the job after a 1947 plane crash killed Gov. Earl Snell, the Senate president (then next in line) and the secretary of state. Hall lost the 1948 Republican primary to Douglas McKay, who went on to win. Hall later became a district judge in Lincoln County.

Some recent Oregon legislative leaders have made it to the governor’s office. But Senate Republican leader Vic Atiyeh lost his first bid for governor in 1974, before he won in 1978. House Majority Leader Barbara Roberts and Senate Majority Leader Kate Brown were elected secretary of state before becoming governor. Senate President Gordon Smith, a Republican from Pendleton, was elected on his second try for the U.S. Senate in 1996; he served two terms before Democrat Jeff Merkley unseated him in 2008. After 12 years as president of the National Association

of Broadcasters, Smith has returned to Pendleton.

## Drazan: First Republican in 40 years?

Christine Drazan of Canby emerged from a record field of 19 candidates to win the Republican primary.

Drazan, who turns 50 this year, has been president of the Cultural Advocacy Coalition of Oregon. She was elected in 2018 to the first of two terms in the Oregon House, and unseated a sitting Republican leader after the 2019 session. She stepped down from her leadership position in late 2021, and from the House earlier this year.

She also was the chief of staff to Mark Simmons when he was Oregon House speaker in 2001 and 2002.

Drazan seeks to be the first Republican elected governor since 1982, when Atiyeh won a second term. Democrats have been elected governor ever since in the longest streak by either major party in Oregon. However, in those 10 elections, only Kitzhaber won a landslide victory with 63% against 30% for Republican Bill Sizemore in 1998. (Sizemore ran again this year but trailed several other candidates.)

The closest a Republican has come to winning

in recent years was Chris Dudley, who lost to Kitzhaber in 2010 by just 22,000 votes of 1.5 million cast.

## Johnson: Neither of the above

Awaiting Kotek and Drazan is Betsy Johnson, a former Democratic state senator from Scappoose who is mounting an independent bid for governor. Johnson will need 24,000 signatures to qualify for a spot on the Nov. 8 ballot.

Johnson is a former state aviation director and owner of her own helicopter company. She was in the Oregon House from 2001 to 2005, when she was appointed to the Senate. She left the Senate at the close of 2021.

Johnson is the daughter of Sam Johnson — a sawmill and forest land owner who himself was a Republican state representative from Redmond from 1965 to 1979, and Redmond mayor from 1979 until his death in 1984 — and Elizabeth “Becky” Johnson, a philanthropist.

Johnson also would break a barrier. Only one Oregon governor has been elected since statehood who was not affiliated with the Democratic or Republican parties — Julius Meier in 1930. Meier came from the family that established the Meier and Frank department store chain, which was sold in 1965. A grand-nephew was Gerry Frank, a Salem businessman and former aide to U.S. Sen. Mark Hatfield, who died March 13 at age 98.

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