



Oregon Department of Environmental Quality

Questions and Answers

NEXT Renewable Fuels Draft 401 Water Quality Certification

This document is a comprehensive list of questions that were asked during the public hearing that DEQ held on Oct. 8, 2024 about NEXT Renewable Fuels Oregon's draft 401 Water Quality Certification.

Can the January 2025 deadline be extended to allow for the U.S. Army Corps of Engineers (USACE) to complete the Environmental Impact Statement (EIS)?

The U.S. Environmental Protection Agency's 401 rule gives DEQ a maximum of one year to issue a decision. Under that rule, DEQ would waive authority if it does not issue a decision by that deadline. DEQ does not waive authority. DEQ intends to issue a certification or denial by Jan. 12, 2025.

If DEQ denies the application, can NEXT reapply?

NEXT cannot reapply for a 401 water quality certification without having the reasons for the denial addressed. Per EPA's final 401 rule from 2023, DEQ must explain in a denial of certification why DEQ is unable to certify that the activity will comply with water quality requirements. This could include, but is not limited to, a description of any missing water quality-related information if the denial is based on insufficient information.

Why does the public notice refer to the 2021 application?

The federal application with the USACE for the Section 404 authorization has been active since 2021.

How much have you have engaged Beaver Drainage Improvement Company (BDIC), who has, by statute, overall approval of any projects in the Beaver Drainage District? This was reinforced with Multnomah County Drainage District vs an entity in Oregon court, which stated you have to get approval from the drainage district.

DEQ has been in communication with the Beaver Drainage Improvement Company over the years of DEQ's involvement with the project. DEQ has not found evidence of the statute referenced in the question. The project site is located on land zoned Resource Industrial Planned Development (RIPD).

The waterways within the Beaver Drainage District are intimately connected. The surface water and groundwater are often the same. How is it possible to look at stormwater runoff as a separate entity when the entire area of this facility is located on unstable ground, with a failing dike system and completely surrounded by water? The emergency game plan in the event of catastrophe for the NEXT facility is to flood the Beaver Drainage District for containment.

Surface water is defined as any body of water that is above ground including rivers, streams, lakes, reservoirs, and wetlands. The 401 water quality certification does not regulate groundwater. DEQ uses Water Pollution Control Facility (WPCF) permits to implement groundwater protection rules, which are required for facilities that discharge to the ground. No WPCF permits will be issued to this proposed facility because it will not discharge wastewater or stormwater to the ground.

DEQ does not approve of untreated stormwater runoff to comeingle with groundwater or surface water.

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800-452-4011 | TTY: 711 | deqinfo@deq.oregon.gov

Columbia Pacific Bio-Refinery (CPBR) is the terminalling provider for the NEXT project. CPBR has oil spill contingency plans with EPA, U.S. Coast Guard and DEQ in the event of a spill at Port Westward. CPBR also practices spill scenarios as spill drills regularly, which the latest worst case scenario spill drill was in August 2024.

How can DEQ be “reasonably assured” the project complies with the Clean Water Act if the local drainage district has identified glaring flaws in the proposal already?

DEQ’s review of the project has concluded it will be consistent with applicable provisions of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41 and other requirements of state law, provided the conditions incorporated into the 401 WQC are strictly adhered to by NEXT.

In 2021, EPA expressed concerns that NEXT “has not provided sufficient information for the to make a reasonable and defensible judgment that the proposed activities comply with the Clean Water Act...” Why is DEQ concluding that this proposal is reasonable, when EPA said it was not?

That comment from EPA was from NEXT’s 2021 request. DEQ has received revised materials and information since then. The draft 401 WQC is based on the 2024 request for a 401 WQC received by DEQ in January 2024.

Why is DEQ apparently relying solely on information from the applicant, which has a track record of misleading the community and providing contradictory information, and not even waiting for the draft EIS?

Like other permits, DEQ evaluates the information submitted in the application and determines if the requested permit or certification will comply with Oregon’s regulations. DEQ then drafts the permit or certification in accordance with Oregon rules and provides a public review and comment process, which could impact the final permit or certification based on comments received. Issued permits and certifications are enforceable and violations may result in orders to pay a civil penalty or perform corrective actions.

DEQ’s 401 Water Quality Certification Program reviews and evaluates the water quality impacts of projects that require a federal permit or license to conduct any activity that may result in a discharge to waters of the United States under Section 401 of the federal Clean Water Act. DEQ reviews the environmental information submitted to the federal permitting agency, which is USACE in this case, and other environmental information and evaluations as necessary to demonstrate that the activity will comply with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This includes water quality standards described in OAR 340-041, and other requirements of state law. DEQ may request any additional information necessary to complete an application or to assist the department in evaluating a proposed activity’s impacts on water quality.

The 401 WQC is part of the federal 404 authorization process led by USACE. As the [lead agency](#) for evaluating the 404 application and preparing the draft EIS, USACE will publish the draft EIS for public review and comment prior to preparing the final EIS.

Why is DEQ describing the number and contents of tanks as it did in the public notice and stating that feedstocks will primarily arrive by barge, despite ample evidence that rail-fed feedstocks like soybean oil will be used?

Feedstocks will primarily be received via barge and oceangoing vessels. The finished products will then be transported through a pipeline to the terminal provider where it will be shipped via vessels. Product will also be

transported via rail to connect with the existing port's rail spur. A rail spur is a short, dead-end track that branches off from a main track to provide access to commercial or industrial areas.

Why is DEQ failing to consider the seismic readiness of dikes in the area?

The facility will be seismically supported with pile foundations by installing approximately 15,200 16-inch steel piles that are 90-feet long and will be driven by a vibratory hammer. USACE is the regulatory agency in charge of Section 408 authorizations, which allows another party, such as a local government, company or individual, to alter a Civil Works project, such as a levee.

Why is DEQ saying that they will use waste materials? NEXT investors stated as recently as October 2023 that it would rely on soybean oil, not a waste product, for the majority of its feedstock.

The application states "vegetable oils, used cooking oil, animal tallow and inedible corn oil." Soybean is a vegetable oil.

Did I hear that the Oregon Department of State Lands is the agency that will approve or deny this certification? What is DEQ's role?

DEQ is the agency to issue or deny the 401 water quality certification. This is part of the federal 404 authorization process administered by USACE. The Oregon Department of State Lands and USACE are responsible for overseeing the details and implementation of the mitigation plan. DSL issued a state removal-fill permit to NEXT in 2022 which includes the off-site mitigation plan.

Why is DEQ not addressing pollution into Bradbury Slough in the public notice, despite the fact it will receive toxic pollution from this facility? Is DEQ claiming that it will sample water into Bradbury Slough?

NEXT is not proposing in-water work within Bradbury Slough. NEXT will need a 1200-Z Industrial Stormwater general permit from DEQ for the project. Wastewater discharge is permitted under the Port's NPDES permit.

Will there be water sampling in the Bradbury Slough?

The 401 WQC is not conditioning water quality sampling within Bradbury Slough because the application for a 401 WQC does not propose discharging to Bradbury Slough. The facility will discharge combined wastewater/stormwater to the Columbia River via the Port of Columbia County wastewater treatment facility which has an existing NPDES permit 102650 (WQ File number 111746) that complies with the current TMDL. The NPDES permit requires sampling of the effluent before it goes out into the Columbia River and at some internal monitoring points on the property. The outfall is along the riverbed in the main channel, not Bradbury Slough.

How many fuel tanks? How many gallons of flammable, toxic fuel?

The proposed plan at full capacity is 50,000 barrels per day, or 1.58 million gallons.

What are the bidding requirements for the U.S. Army Corp of Engineers?

The USACE's bidding requirements are not part of DEQ's 401 WQC review process. This is a question for the USACE.

Does DEQ not consider water quality impacts from discharge that is in its jurisdiction points during flood conditions/seismic events?

DEQ considers water quality impacts by projects within a mapped floodplain; however, certification relative to flooding or earthquake-specific conditions is outside of DEQ's authority.

Didn't NEXT stop paying full rent to the Port in 2024? Isn't this a warning signal that NEXT will fail to support the community and its mitigation project?

The tenant-landlord relationship isn't part of the 401 WQC review process. This is a question for the Port of Columbia County.

Contact

Please reach out to the following individuals for questions about DEQ's regulatory oversight of NEXT:

- 401 Water Quality Certification: [Haley Teach](#), 401 Program Coordinator
- Air quality permit: [David Graiver](#), Air Quality Permit Writer
- Emergency Response Program, spill drills: [Scott Smith](#), Emergency Response Planner
- Community Liaison: [Melyssa Graeper](#), North Coast Regional Solutions Team Coordinator
- Media: [Michael Loch](#), Public Affairs Specialist

If you have questions about the land use compatibility statement or anything related to NEXT being allowed to operate in its current location, please contact the Columbia County at building@columbiacountyor.gov, or Port of Columbia County at inquiries@portofcolumbiacounty.org.

If you have questions about the mitigation plan, please contact Heather Dimke at Oregon Department of State Lands at heather.dimke@dsl.oregon.gov.

If you have questions about the draft Environmental Impact Statement or alternative analysis, please contact Bo Davidson at U.S. Army Corps of Engineers at james.e.davidson2@usace.army.mil.

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