



Oregon

Kate Brown, Governor

Department of Environmental Quality
Northwest Region Portland Office/Water Quality
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CERTIFIED MAIL NO. (7018 1830 0001 5906 4951)

September 6, 2022

Christopher Efir
NEXT Renewable Fuels Oregon, LLC
11767 Katy Freeway, Suite 705
Houston, TX 77079

The Oregon Department of Environmental Quality (DEQ) initiated the review process of the US Army Corps of Engineers (USACE) permit application #2020-283. The applicant proposes to construct a renewable fuels facility within wetlands, near Clatskanie, in Columbia County, Oregon (Sections 16, 21, 22, 23, Township 8N, and Range 4W).

Upon receipt of a valid request for certification on October 8, 2021, DEQ began evaluation of the project pursuant to Section 401 of the Federal Clean Water Act to determine its compliance with applicable water quality requirements. On May 27, 2022, USACE issued DEQ a reasonable period of 365 days to complete its review. On August 8, 2022, DEQ issued the applicant a set of review questions following receipt of preliminary application materials.

As of September 1, 2022, DEQ has not received responses to its August 8, 2022 technical review questions and therefore does not have the information that it needs to determine compliance with water quality requirements.¹ As outlined in the August 8, 2022 request, additional information is needed regarding erosion and stormwater controls being undertaken to ensure compliance with water quality standards.² The certification is therefore denied without prejudice. This denial of the 401 Water Quality Certification shall become effective on September 1, 2022.

Should the applicant desire to reapply for a 401 WQC, DEQ will resume evaluation of the project when a pre-filing meeting request followed by a valid request for certification per the 2020 EPA 401 Rule has been received along with responses to its August 8, 2022 review questions.

In accordance with OAR 340-048-0045(2), the applicant may request a contested case hearing to be conducted in accordance with the Oregon Administrative Procedures Act (Oregon Revised Statute, chapter 183 and OAR 137-003-0501 to -0700) if dissatisfied with the certification decision. Such a request must be made in writing and comply with OAR 340-011-0530(2) and OAR 340-048-0045(2).

¹ **Rule:** OAR 340-048-0020(2)(g)

Justification: DEQ must ensure that pollution does not enter waterways.

² **Rule:** OAR Chapter 340, Division 041

Justification: Insufficient control of erosion and stormwater results in violations of the turbidity standard, among others.

The request for hearing must be mailed to and received by the Department of Environmental Quality within 20 days of the date of mailing (set forth above):

Oregon Department of Environmental Quality
Attn: Jeff Brittain
700 NE Multnomah Street, Suite 600
Portland, OR 97232

If a written request for hearing is not received within the 20-day period, your right to a hearing shall be considered waived. If a timely request for hearing is received by the Department, you will be notified of the time and place of the hearing and provided information on the procedures by which contested cases are heard, your rights, the import and effect of such a hearing, and your rights and remedies. Please review OAR 137-003-0550 to determine whether you must be represented by legal counsel at this hearing, if any. In accordance with OAR 340-048-0045(3), this certification decision is effective upon the issuance of this decision, notwithstanding a request for a contested case hearing or other judicial review, if any.

If you have any questions, please contact Jeff Brittain at 503-229-5395, or by email at jeffrey.brittain@deq.oregon.gov.

Sincerely,

Nina DeConcini, on behalf of

Steve Mrazik
Water Quality Manager
Northwest Region

ec: Joe Brock, USACE
Kate Mott, USACE
Dan Cary, DSL
Laurie Parry, Stewardship Solutions

NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active-duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information, contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through: <http://legalassistance.law.af.mil/content/locator.php>. The Oregon Military Department does not have a toll free telephone number.