

October 25, 2024

Haley Teach, Oregon DEQ.
700 NE Multnomah St, Suite
600, Portland, OR 97232.

Dear Oregon DEQ:

My name is Mike Seely, and I own and operate a multi-generational mint farm and value-added, high-value agricultural business with a brand known across the U.S. I am a former commissioner of the drainage district that manages that water that sustains my farm and others close to it. I care deeply about our community, our farms, our water, and the Columbia River Estuary. By issuing the proposed Clean Water permit for NEXT, DEQ would allow Houston-based NEXT to harm and pollute all of these resources and values.

I am concerned that DEQ is rushing its process for making a decision regarding a major new refinery and rail yard in the midst of a farming community that could not survive in the midst of such an impact. In comments regarding the land use permit, which I am appealing along with Columbia Riverkeeper and 1000 Friends of Oregon, we explained to the County the basic problem with the project: it is vastly out of scale with what the resources in the area can sustain. The result of DEQ's actions will be toxic pollution in the water, dramatically altered hydrology for residents and the diking and drainage system, and negatively impacted fish habitat inside and outside of the dikes.

In my opinion, as a resident, farmer, and former manager of water resources in the area, DEQ cannot reasonably conclude that the project will not degrade the waters of Oregon. Instead, it is reasonably likely that the opposite is true: the project will absolutely upend our ability to sustain farms, water quality and salmon habitat.

Even as Houston-based NEXT has caused deep mistrust in the community, DEQ is compounding this problem by proposing to authorize this project without having resolved major community concerns that are directly related to gaps and flaws in the draft permit.

For example, at Port Westward, groundwater comes to the surface. DEQ says a liner must be used in new ditches (they call them ponds) that are meant to control polluted runoff - if groundwater is encountered during construction. Yet, NEXT has stated elsewhere in its January 2023 stormwater plan that they do not think this will be effective. This was an issue discussed extensively in the land use permitting process, as well, because it shows the incompatibility of the proposal's water runoff with the surrounding area.

During the county process, NEXT insisted that its groundwater plans were accurate, and NEXT's groundwater plans state, "A liner is not recommended at this time." DEQ includes this plan as a document on its website. We simply cannot judge the impacts of this project without a better analysis of how this proposal would impact water quality, quantity, and the distribution of water throughout our diked lands. Can DEQ reasonably include a condition on the permit that conflicts with the underlying land use decision? No, DEQ cannot do this.

Where will the water go if a liner is installed? Installing a liner will require disturbance that displaces water. It will also alter flow in the area in ways that are not well understood. As you heard from nearby landowners, construction in our area causes unpredictable impacts to water quality and quantity. DEQ cannot reasonably conclude that surface water and groundwater will not be comingling, and that the resultant pollution will not violate Oregon's Clean Water Act standards.

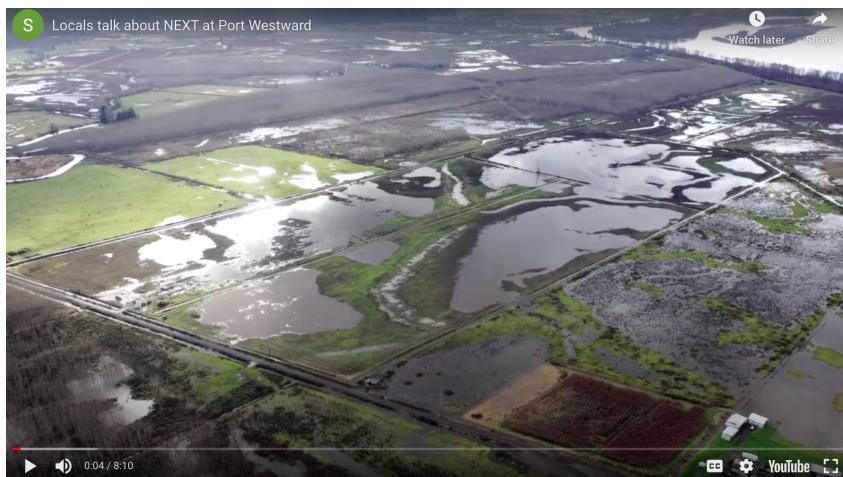
The dike itself is not adequate to sustain the proposed development. According to the Corps in 2014, "there are critical unacceptable items to be addressed and other items rated as minimally acceptable that require further investigation. Guidance for levee system evaluation for NFIP accreditation (EC 1110-2-6067) requires that all unacceptable inspection items be corrected prior to achieving a positive findings result. Consequently, BOD must correct any unacceptable routine or periodic inspection items by the end of Phase 2 or receive a negative findings result." These issues are not resolved. In fact, they have gotten worse as dikes have continued to settle.

These are factors that DEQ must consider about how water pollution will move in the area: inadequacy of the dike and frequent high groundwater levels, ongoing and

increasing seepage across the area, and interference with the BDIC's ability to maintain and sustain drainage systems. Failure to consider these aspects basically renders DEQ blind to the actual consequences of the certification it proposes to issue. It's just totally backwards and wrong for DEQ to state that it does not consider the adequacy of the dike and drainage systems it is relying upon for water pollution to remain contained.

Accordingly, DEQ is not handling the issue of flood risk appropriately. This is a concern for the lives and safety of those in the area. The entire area is prone to seasonal high water, caused by groundwater levels that fluctuate with the Columbia River itself, combined with occasional flooding from local precipitation. When these forces converge, our area becomes saturated. Saturated peat soil, saturated levee systems, and drainage systems full of water are regular occurrences for us. Setting aside the issue of 100-year floods, DEQ must take seriously that the wetland delineation for our area acknowledges that high water levels regularly impact our area.

In most years, for at least one month of the year, often much more, areas where we farm become difficult to access because of standing water. That is because most of the drainage district is below river level, and upwelling groundwater and hillside flooding impact our ground. Take a look at this [8-minute video](#). Stop the video at the beginning, and you'll see standing water all over Port Westward. Here is a snapshot.



DEQ is piecemealing its review to the point of absurdity. As a local resident, I can tell you with certainty that the project cannot be constructed and operated without polluting water. And, I am very concerned about the project's potential to harm the safety of the community by changing surface and groundwater movement in ways that harm our transportation, drainage, farms, and homes.

The Beaver Drainage Improvement Company has not been adequately consulted. DEQ has failed to provide adequate communication opportunities for the concerns of local residents to be heard. There are basic concerns about how polluted water will impact farms, fish, and the people who live in the area. It is not enough for DEQ to meet with BDIC privately, so late in the permitting process. We trust our Board, but they deserve the right to communicate with DEQ in public, at a drainage district meeting. DEQ must confer with them publicly and offer the right for residents of the drainage district - who would likely have to vote on whether such a development is even allowable - to be heard as well.

DEQ's response to our concerns was dismissive. DEQ is well aware of the problems in the BDIC, as they have been raised during DEQ's own rulemaking for Senate Bill 1567, which is meant to address seismic resiliency of tanks. Do you know who provides the ultimate spill containment for the tanks in the BDIC? The drainage district does. The dikes and drainages are expected to be containment for many of the structures (think of pipes, for instance) that will be potentially sources of spill in a large seismic event. To pretend otherwise - and to ignore this impact at this stage of review - is absolutely unacceptable. Potential routine pollution from train cars, unloading racks, pipes compound the risks from tanks and the refinery itself, and spills could create major harm to farmers, fish, and the River.

NEXT admits that its pollution will harm essential fish habitat on a routine basis, yet DEQ's public notice does not even mention Bradbury Slough. DEQ responded to a question about this by stating that a later permit review would determine how pollution would impact the Slough. This is unacceptable. DEQ cannot reasonably conclude that waters of Oregon will be protected. My friends and neighbors in Johns District would also be impacted. This has not been considered.

DEQ's approach to this permit should ring alarm bells all over the region. Instead, we had a hearing on October 8, 2024 where DEQ shared misinformation, such as

the feedstocks will arrive “primarily” by barge. This is not true. In response to a question about this, DEQ downplays the rail infrastructure and repeats misinformation, stating,

“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.”

This is false. According to the underlying land use case for the rail yard for the project, NEXT proposes over 3 miles of rail tracks to accommodate long trains of feedstocks. Also, in October 2023, NEXT provided to the SEC detailed information about its potential operations which included the table below.

- The projections assumed the following compositions of **feedstock** for the applicable production years:

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Soybean oil-Midwest	60.0%	60.0%	50.0%	40.0%	35.0%	30.0%	30.0%	30.0%	30.0%	30.0%
Other Vegetable oil-foreign	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
Used cooking oil (UCO)	5.0%	5.0%	10.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%
Animal tallows-high energy	7.5%	7.5%	10.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%
White/Yellow Greases	7.5%	7.5%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%
U.S. Distillers Corn oil	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%
Other (emerging oils)	0.0%	0.0%	0.0%	5.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

- The projections assumed that BP will supply 100% of NXTCLEAN’s **feedstock** supply on substantially the terms of NXT’s previous **feedstock** supply agreement with BP, which has since been terminated.

The table shows that NEXT, at the outset of operations, will rely primarily on rail-fed feedstocks like soybean oil. It even specifies that the soybean oil will come from the Midwest. NEXT’s 2023 investors acknowledge that NEXT does not know - and so DEQ cannot be assured - about the proportion of rail versus marine feedstocks because the agreements were canceled.

Because the rail traffic will harm my farm, my community, and the water we depend on, I have taken the extraordinary step of joining a LUBA appeal against

the project. I am worried for my community and my neighbors in Johns District also who would be cut off by long trains of soybean oil from the Midwest and impacted by choking pollution from a massive refinery. DEQ has not taken the time to understand these issues. Instead, DEQ is tying its own hands with an overly narrow approach.

Please stop and rethink DEQ's approach to Port Westward. The agency has some explaining to do for why this process appears so rushed, so incomplete, based on conditions that are unworkable, and without significant community input and input from the local governing drainage district.

You have lost your credibility as a regulator in my view, and many of my neighbors. To regain it, you must deny the permit.

Sincerely,

Mike Seely