

October 24, 2024

Governor Tina Kotek
900 Court Street, Suite 254
Salem, OR 97301-4047

Director Leah Feldon
Oregon Department of Environmental Quality
700 NE Multnomah St #600
Portland, OR 97232

RE: Diesel Refinery Threatens Climate, Neighbors, and Clean Water

Dear Governor Kotek and Director Feldon,

The undersigned 23 organizations and individuals are deeply concerned by Oregon's proposed approval, under Section 401 of the Clean Water Act, of a massive unconventional¹ diesel refinery in the Columbia River Estuary. The Oregon Department of Environmental Quality (DEQ) and other Oregon agencies have ignored local concerns about the refinery and uncritically accepted NEXT Renewables Oregon LLC's (NEXT) dubious premise that it can manufacture "renewable" fuel from unsustainable feedstocks and fracked gas. We sincerely appreciate both of your leadership on climate and your commitments to protecting Oregon's water quality and other natural resources. Approving NEXT's refinery would significantly undermine your good work, and credibility, on both fronts.

a. NEXT's climate benefits are a false promise.

Direct emissions from the refinery would be significant and unavoidable. NEXT would emit more than 1 million tons of greenhouse gas pollution each year, making it one of the largest greenhouse gas polluters in Oregon. NEXT would also consume over 14 million cubic feet of fracked gas per day, roughly on par with the entire City of Eugene. In short, the refinery would make it significantly harder to achieve the stated goal of your administration and agency: reducing Oregon's greenhouse gas emissions to 90% below 1990 levels by 2050.

To deflect attention from this substantial problem, NEXT offers vague and unenforceable promises that its fuel would be meaningfully cleaner than—and *decrease the overall consumption of*—conventional diesel and jet fuel. Neither of these outcomes appear likely, much less certain enough to justify one million tons of new greenhouse gas pollution each year in Oregon.

¹ We purposefully do not use the industry terminology of "renewable" diesel, since NEXT proposes manufacturing diesel and jet fuel using power and materials derived from fracked gas, and feedstocks of unverifiable origin.

NEXT has refused to make any commitments about the feedstocks for, or the carbon intensity of, the fuel that NEXT claims would be “clean,” “renewable,” and “sustainable.” NEXT’s lack of transparency is important because different feedstocks—such as seed oil, palm oil, or animal fats—result in end products with significantly different carbon, social, and environmental footprints. Worse still, DEQ’s public notice for the proposed 401 Certification perpetuates this confusion by claiming that “[f]eedstocks will primarily be received via barge and vessels,” implying that feedstock will primarily come from overseas.² In reality, NEXT’s insistence on building a rail yard in farmland near the refinery, along with NEXT’s filings with the Securities and Exchange Commission in October 2023, suggest that much of the refinery’s feedstock would come from soybean oil and similar domestic crops. Such purpose-grown feedstocks are unlikely to produce fuel with a meaningfully lower carbon intensity than conventional diesel. Further, using non-waste, purpose-grown feedstocks to make diesel incentivises land conversion, higher food prices, and socially irresponsible substitutes like palm oil. Accordingly, NEXT’s supposed climate benefits are unenforceable³ and unlikely to support the low-carbon future you are currently championing for Oregon.

b. NEXT faces staunch region-wide and local opposition.

Because NEXT is likely to harm the climate and undermine Oregon’s progress toward decarbonization, the 23 undersigned organizations oppose DEQ’s approval of the diesel refinery.

Regional opposition to NEXT goes well beyond climate pollution. Public health experts have testified to DEQ, expressing concerns about the health and safety impacts of the refinery. Communities and organizations in the Vancouver-Portland airshed have emphasized the cumulative impacts of air pollution from new proposals including NEXT and the proposed Drax wood pellet facility in Longview, WA, which could compound existing smog and other air quality problems in the metro area. And a spill or disaster at NEXT’s facility could impact the ecology and economy of communities all along the Columbia River that depend on vessel traffic. Such a disaster was narrowly avoided in November 2023 when a gravel barge collided with and damaged the fuel loading pipeline system that NEXT intends to use. So far, DEQ’s air and water permitting for NEXT has failed to address any of these threats.

Strong local opposition to the diesel refinery also exists. The area surrounding the proposed diesel refinery includes productive blueberry fields, a Zen Buddhist Monastery visited by many people each month, farms that help to sustain a local food hub, high-value mint crops known around the world, hundreds of acres of wetlands, and critical salmon habitat. Much of this landscape is protected by a sensitive and locally operated levee and drainage system that provides flood control and irrigation. NEXT’s proposal would alter or threaten all of this in ways

² This is a NEXT talking point, and not even a current one. The supply agreements that NEXT once held that might have supported this assertion have been terminated.

³ Given NEXT’s backers’ history of illegal activity and [misleading regulators and the public](#), it would be foolish to accept NEXT’s claims at face value.

that DEQ's proposed 401 Certification does not accurately reflect; accordingly, many local residents—including members of the undersigned organizations—feel that DEQ is ignoring their concerns and failing to adequately protect Oregon water and air quality.

c. No reasonable assurance that NEXT will meet water quality standards

DEQ's proposed approval fails to ensure that NEXT will meet water quality standards. NEXT's plan involves a truly massive refinery complex, rail yard, tank farm, and shipping terminal in a seismically hazardous, environmentally sensitive area that is nearly all wetland or open water. Nevertheless, DEQ's boilerplate proposed approval claims that DEQ is "reasonably assured" that the project will not violate water quality standards. DEQ is mistaken. Ample evidence suggests that NEXT's project is likely to harm water quality and beneficial uses; most glaringly, NEXT's own Biological Assessment from March 2023 finds "the project **will adversely affect** essential fish habitat" and will likely harm 13 species of salmon and steelhead. Likely fuel spills, increased vessel traffic and associated pollution, and toxic runoff from the facility would also degrade water quality. We cannot square the well-documented and far-reaching effects of NEXT's proposed refinery and rail yard with DEQ's cursory conclusion that the project should meet water quality standards.

DEQ's narrow review conflicts with federal regulations implementing section 401 and DEQ's own statements regarding the scope of section 401 review. The section 401 regulations specifically state that 401 certification should address "the activity's construction,"⁴ but DEQ has explicitly disregarded water quality impacts related to the construction of the refinery and associated infrastructure. Similarly, DEQ's past statements on the scope of 401 review support analyzing an activity's indirect effects on water quality,⁵ but DEQ has disclaimed responsibility for considering a wide range of indirect impacts on water quality, from proposed mitigation to spill risk to shipping impacts. In short, DEQ's proposed approval does not appear to follow the law or past practice of the agency.

At the very least, DEQ should deny the project at this time for lack of information. Breaking with normal practice, DEQ has proposed approving the refinery before seeing the draft environmental impact statement (EIS) and draft Clean Water Act 404 permit. These forthcoming federal analyses will contain detailed information about NEXT's project and the effects on water quality. DEQ is needlessly depriving itself, and the public, of relevant information. On this basis

⁴ 40 C.F.R. 121.3(a) ("[T]he certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation.").

⁵ See ODEQ's Comments on EPA's 2023 Rule (Aug. 8, 2022) ("DEQ strongly supports a definition of 'activity' that includes all activities that might affect water quality both directly and indirectly.").

alone, DEQ could deny 401 certification and allow NEXT to re-apply once the draft EIS becomes available.

Conclusion

We do not oppose truly renewable diesel in principle, and we recognize that it may have important, if limited, applications. However, NEXT's refinery and fuel products would not be renewable in any meaningful sense. We therefore strongly urge you to reconsider Oregon's proposed approval of this diesel refinery that threatens your climate goals and the Columbia River Estuary.

Sincerely,

Dan Serres, Advocacy Director, Columbia Riverkeeper

On behalf of:

Great Vow Zen Buddhist Monastery

Carroll Sweet (Scappoose), Annie Christensen (St. Helens), and Darrel Whipple (Rainier)
for Envision Columbia County

Mary Stites, Staff Attorney, Northwest Environmental Defense Center

Mary Peveto, Executive Director, Neighbors for Clean Air

Mary Kyle McCurdy, Associate Director, 1000 Friends of Oregon

Samantha Hernandez, Healthy Climate Program Director, Oregon Physicians for Social
Responsibility

Heart of Wisdom Zen Buddhist Temple, Portland

Zen Community of Oregon

Brandon Schilling, Save Port Westward

Jasmine Lillich, The Wild Locals LLC, local regenerative food business in Clatskanie

Micah Meskel, Assistant Director of Urban Conservation, Bird Alliance of Oregon

Cathryn Chudy (Board of Directors) and Lloyd Marbet (Executive Director) Oregon
Conservancy Foundation

Cassie Cohen, Executive Director, Portland Harbor Community Coalition

Wendy Schmidt, Beaver Drainage District Farmer

Nick Caleb, Staff Attorney, Breach Collective

Dineen O'Rourke, Campaign Manager, 350PDX

Heidi Cody, Coalition Manager, Alliance for Community Engagement (ACE) SW WA

Kelsey Baker, Mosquito Fleet

Keith Curl-Dove, Fossil Fuel Campaign Manager, Washington Conservation Action

Allie Rosenbluth, US Program Manager, Oil Change International

Marcie Keever, Oceans & Vessels Program Director, Friends of the Earth

Mark Vossler, Cardiologist, Climate and Health Task Force Co-Chair, Washington Physicians for Social Responsibility

Level Pratt, Marine Protection and Policy Director, Friends of the San Juans

cc:

Columbia River Inter-Tribal Fish Commission

Cowlitz Indian Tribe

Confederated Tribes of the Grand Ronde