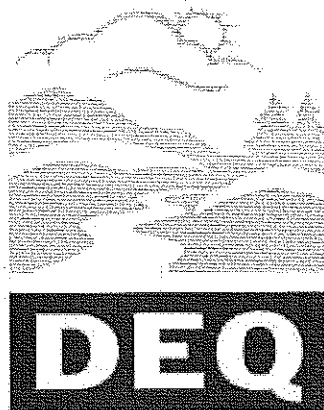


5/14/76
EQC

EQC Agenda Items, May 14, 1976

5/14/1976

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS**



**State of Oregon
Department of
Environmental
Quality**

This file is digitized in **black and white** using Optical Character Recognition (OCR) in a standard PDF format.

Standard PDF Creates PDF files to be printed to desktop printers or digital copiers, published on a CD, or sent to client as publishing proof. This set of options uses compression and downsampling to keep the file size down. However, it also embeds subsets of all (allowed) fonts used in the file, converts all colors to sRGB, and prints to a medium resolution. Window font subsets are not embedded by default. PDF files created with this settings file can be opened in Acrobat and Reader versions 6.0 and later.

MINUTES OF SPECIAL MEETING
OF THE
OREGON ENVIRONMENTAL QUALITY COMMISSION
May 14, 1976

On Friday, May 14, 1976, the Commission called to order a special meeting at 8:00 a.m. in the Department's Salem-Northcoast Regional Office at 796 Winter Street, N.E., in Salem.

Commissioners present included Mr. Joe B. Richards, Chairman; Dr. Morris Crothers, Vice Chairman; Dr. Grace Phinney; and Mr. Ronald Somers. Commissioner Jacklyn Hallock was unable to attend the meeting.

Present to represent the Department were its Director, Mr. Loren (Bud) Kramer, and several additional staff members. Mr. Robert Haskins, among the agency's counsel from the Department of Justice, was also present.

RULE ADOPTION: AGRICULTURAL OPEN BURNING (FIELD BURNING) IN THE MID-WILLAMETTE VALLEY

The Director orally amended the staff report to the Commission. He deleted the last paragraph on the third page of the report. It was the Director's apprehension that the paragraph might be interpreted as encouragement for the seed growers to seek "hardship" authorization from the Governor's Office to burn acreage beyond the permissible 195 thousand in an experimental "big burn" (to see if there would be sufficient heat accumulation to cause an efficient ventilation of smoke through powerful convection currents which would disperse the smoke to a high altitude).

It was the apprehension of Commissioner Crothers that the convection ventilation experiment might unreasonably call upon the growers to burn acreage from their limited allocation that they might not otherwise wish to burn.

Commissioner Somers noted the testimony had indicated that, contrary to expectations set forth in the hearing regarding the 1975 acreage allocations, field burning machines had not emerged as a viable alternative to open burning. He expressed concern that there should be incentive for the growers to undertake the formidable organizational effort requisite to a "big burn" experiment.

With regard to the proposed 100 acres to be granted initially to each grower having registered 100 or more acres, Commissioner Somers sought some assurance that it would not be possible for a single concern to become a collection of spouse, children, grandchildren, and other kin who would each be entitled to burn 100 acres by virtue of having become "growers."

Mr. Scott Freeburn of the Department's Air Quality Control Division assured Commissioner Somers that the acres had already been unalterably registered by ownership before the "100-acre" proposal and that the computer system had already been fed the registered acreage by acre, by owner, by field, and by fire district. It was the view of Mr. Freeburn and Commissioner Richards that the agency was prepared to prevent abuse of the proposal that each grower having registered as much be permitted to burn at least 100 acres.

Commissioner Crothers stated his concern that the "big burn" experiment might possibly require the burning of unregistered acres because the assembling of a block of fields sufficient for the experiment could entail unregistered fields. He felt the inclusion of unregistered acres in the industry's 195 thousand acre allocation would work undue hardship on the growers.

Commissioners Crothers and Somers agreed that the growers participating in any "big burn" experiment would benefit in acres burned at the expense of other growers. Commissioner Phinney argued that this benefit would be an incentive to those experimenting. Its cost, she stated, would be shared equally by all growers through a small, industry-wide reduction in acreage allocation. She asked the staff for conjecture on the amount of unregistered acreage which might be involved if an experiment were conducted.

Mr. Freeburn replied that a large proportion of cereal grain might be involved due to its increased planting this year.

Commissioner Phinney inquired of the probability that sufficient acreage could be assembled for a meaningful "big burn" experiment. Mr. Freeburn stated the present suppositions to be that some sort of early season guarantee should be made to growers in a potential "big burn" area which would provide incentive for them to delay burning their fields until the time of experiment. He added that any experiment that might occur could be expected to take place in the lower valley, such as in Linn County, where fescue is not an important crop.

Commissioners Richards, Phinney, and Somers agreed that a provision for an early "big burn" to take place on acres beyond the statutory 195 thousand could come only from the Office of the Governor and could be a subject of recommendation only on the part of the Commission.

Commissioner Crothers agreed, with the reservation that it were unfair for the Commission to commit the fate of the growers to the success of any Commission recommendation to the Governor.

The Director, Mr. Kramer, was of the view that the Governor's Office would be less receptive to "hardship" requests to go beyond the 195 thousand acres early in the season than to requests that might eventuate at the end of the season.

Commissioner Crothers expressed himself as in understanding of the caveat of Commissioner Phinney that a Commission recommendation to the Governor with no provision in the rules for a "big burn" within the 195,000 acres under Commission discretion, might result in no experiment during the coming season.

It was Commissioner Crothers conviction that the "field burning" issue would once again be a focal point of legislative activity in the coming session.

Commissioner Somers was critical of the history of assurances to the Commission, and the Legislature, that the field burning machines would evolve during the two years after 1974 as an alternative to open field burning.

Commissioner Richards noted that, regardless of errors revealed by hindsight, the Commission would have to address its authority as granted by statute, including the maximum acreage allocation of 195 thousand acres. He found no fact finding authority in the statute which would entail the issue of allocation beyond the 195 thousand.

Commissioner Somers agreed, but added that there was nothing in the statute to prevent a recommendation to the Governor on the matter. He asserted that such recommendation would be all the more appropriate in view of the dolefully erroneous representations which had been met with reliance.

It was Commissioner Phinney's view that regardless of incentives provided to the development of an alternative to open burning, the incentives would work to the disadvantage of some and thus might be labeled "unfair." She noted that to permit an experimental big burn outside of the 195 thousand acre allocation would be as "unfair" as other alternatives.

Commissioner Richards agreed with Commissioner Phinney and expressed his conviction that whatever incentives might be provided would fall within the Commission's discretion to classify burning under the statute. He added that the Commission should not be vague about incentives for the development of alternatives to open burning. It was his thought that a 400 acre allocation for 1977 should be awarded for each 100 acres burned with a field sanitizing machine in 1976. He felt such incentives were consonant with the statutory intent.

Commissioner Phinney supported Commissioner Richards' suggestion, adding that such an incentive, like the monetary incentive granted by the Field Sanitation Committee, was in order even though the machines were experiencing severe difficulties. She held forth the hope that these difficulties were capable of remedy.

Referring to Proposed OAR Chapter 340, section 26-013(5)(g), the Director amended the proposal to begin "In 1976," instead of "In 1975."

After discussion with the Director and Mr. Freeburn, Commissioner Richards agreed that the proposal should be left as limiting any "big burn" experiment to 10,000 acres, even though such experiment would probably entail acreage more on the order of 7,000 acres. Commissioner Richards informed Commissioner Somers that to delete any reference to a "big burn" limitation would leave the rule without any indication of Commission intent as to how many acres should be subjected to such experimentation.

Commissioner Phinney noted that the staff report referred to a 65% reduction after removal of acreage under the "first 100 acres registered" and "big burn" provisions of the allocation. She pointed out that what was intended was a 35% across the board reduction which would leave burnable 65% of acres registered.

Commissioner Richards expressed his wish to add to the Director's fourth recommendation (regarding special consideration to growers who cooperate with the Field Sanitation Committee in seeking alternatives to open burning) the language "including 400 additional acres for each 100 acres burned with a field sanitizer in 1976." Commissioner Richards was mindful that some political problems within the industry might attend such a provision, but felt that a clear incentive to the development of field sanitizers would be in order. He noted such a provision would not close out consideration of other efforts to find alternatives. He added that the Field Sanitation Committee had considered an incentive consisting of 500 additional acres for each 100 burned by machine. Commissioner Richards felt the mathematics involved would preclude the implementation of a 500 acre bonus during the current season.

Commissioner Phinney noted that the reduction of the bonus by one-fifth might not be a sufficient reduction from the measure considered for this year by the Committee because the maximum allocation next year would be reduced by a much greater percentage.

Commissioner Somers argued against the bonus on his conviction that the machines simply would not be available.

Commissioner Richards countered that some encouraging testimony had been offered by those working on the machines and that the industry itself had not come forward with any other workable alternatives.

Commissioner Somers pointed out that only eight machines, at the most, would be available in the coming season and that, of these, all but two had been bought with the State's money. He feared that the bonus sought by Commissioner Richards would unjustly reward a chosen few who had managed to obtain the use of State purchased machinery. He opined that a present announcement of a bonus intended for acres to be machine-burned in the 1977 season would give sufficient time for the production of additional machines to accommodate those who would avail themselves of such a bonus.

On the other hand, it was Commissioner Richards' view that those working with the machines had invested substantial sums of their own time and money in an effort to cooperate.

It was the view of Commissioner Crothers that the amendment to the Director's recommendation would be well in view of the fact that the same would merely amount to a statement of intent which could be revised by the Commission in the light of coming events.

Commissioner Phinney said she would be more receptive if the language read "up to 400 additional acres" because of the tremendous reduction in maximum allocation under the statute. Commissioner Richards agreed to such a revision.

It was agreed that the proposal would not recommend a negotiable bonus which an owner of three hundred acres who burned 100 by machine could sell or trade to his neighbor.

It was MOVED by Commissioner Crothers, seconded by Commissioner Phinney, and agreed unanimously by all Commissioners present that the Commission add to the fourth paragraph of the Director's recommendation regarding staff action the language "including up to 400 additional acres for each 100 acres burned with a field sanitizer in 1976."

Turning to the proposed OAR Chapter 340, section 26-013(5)(f), Commissioner Richards expressed concern that the proposed Commission recommendation to the Governor for favorable consideration of "hardship" burning applications was without a ceiling. He felt a ceiling of 5,000 acres might be appropriate to insure that the Commission was recommending grants only in the event that its findings as to the relationship of permits and actual burning proved to be incorrect by some small margin. He felt that to recommend that all acres unburned among the 214,500 expected to receive (but not fully use) permits were to put undue pressure against the legislative maximum.

Commissioner Somers was of the view that the Commission was given no statutory power to make any recommendation to the Governor. He feared that to recommend a certain ceiling were to go even further into an unauthorized activity by suggesting in further detail the degree to which the Governor should exercise the discretion given him by the statute.

Commissioner Crothers felt that the record should show the Commission was assured by the Governor's Office that permits in excess of 195,000 acres, to cover the slippage between acres permitted and acres burned, would not result in the burning of over 195,000 acres. Commissioner Somers added that the rules under proposal would not permit the burning of more than 195,000 acres in any event.

Commissioner Phinney felt that the suggestion of Commissioner Richards could be correctly read to mean the Commission would recommend no more than 5,000 acres of burning be considered under the Governor's "hardship" powers. She added that the recommendation might be better off in some form other than a rule.

Commissioner Somers agreed and suggested that the entire paragraph ought to be the subject of a letter to the Governor's Office. Commissioner Phinney felt this could be done at the end of the season and that, in the meantime, the Governor's Office would be fully aware of the Commission action of today.

Commissioner Richards felt that the paragraph might be added as a sixth paragraph to the Director's recommendation for purpose of the Commission's action.

It was MOVED by Commissioner Phinney, seconded by Commissioner Crothers, and approved by Commissioners Crothers, Phinney, and Richards that proposed paragraph (f) of OAR 340, section 26-013(5) be deleted from the proposed rules. Commissioner Somers voted against the motion on the ground that he felt it appropriate both to delete the paragraph and take some other action with regard to its subject matter.

It had been moved that the paragraph be added to the Director's recommendation but Commissioner Phinney, who so moved, had amended her motion as reflected above. Commissioner Crothers, upon hearing the amendment, failed to withdraw his second.

Commissioner Richards had agreed with the apprehension that adding ceiling to the recommendation to the Governor would imply that the Commission would not recommend hardship burning in the event of widespread disease, infestation or other exigency. He noted that there was a possibility of severe hardship with regard to late harvesting crops.

Commissioner Somers MOVED that the Commission send a letter to the Governor setting forth the recommendation that "hardship applications" which might arise from the Commission's action be favorably received, particularly if such a course of action might encourage participation in a "big burn" experiment. The motion died for lack of a second.

Commissioner Phinney explained her reluctance to second the motion in that she did not fully understand the same. Commissioner Crothers stated he would rather see the letter before approving the same. Commissioner Somers agreed that action should await a writing of some kind upon which the Commission could deliberate. Commissioner Phinney opined that the Commission might well write a letter to the Governor's Office that contained only a recital of the Commission's reasons for giving out permits for acreage beyond the 195 thousand acre maximum.

Commissioner Crothers felt that the problem was one which would receive legislative attention in the next session because the machines had not evolved as expected. He noted the importance of the "big burn" experiment as the only possible salvation of the industry under the current statute.

Commissioner Richards did not share Commissioner Crothers pessimistic prognosis about the field burning machines or the industry. Commissioner Phinney acknowledged the presence of many problems but was not of the opinion that they could not be solved.

Commissioner Crothers stated his conclusions to have been based in part upon the history of unfulfilled promises regarding alternatives, a history said to have begun in 1965. Commissioner Somers was in agreement that the machines would not prove to be the answer.

It was the opinion of Commissioner Somers that the acreage set aside for any "big burn" experiment should be acreage beyond the 195 thousand quota and should be allocated by the Governor. Commissioner Crothers explained that, in his view, some of the acreage assembled for any "big burn" experiment would normally have been among the 195 thousand acres and some would not. It was the acreage which might not otherwise have been burned to which he addressed his concern that the Governor permit its burning.

Mr. William Nelson, representing several seed growers, argued the importance of a "big burn" being tried prior to the next legislative session. He cautioned that, in his view, the plan to take the acreage for such a burn from the 195 thousand acre allocation would result in failure because the growers, being offended by the consonant reduction in their quotas, would elect not to cooperate with the experiment.

Commissioner Crothers and Commissioner Richards expressed a lack of empathy for any growers who would ignore measures which might prove vitally important to the industry; ignoring them because the circumstances surrounding the measures were not considered "fair" to a degree of mathematical nicety.

Commissioner Phinney reminded Mr. Nelson that the only way in which the Commission would have authority to insure a "big burn" would be to take the involved acreage from within the 195 thousand acre quota, the ceiling of Commission authority to approve open burning.

There was some discussion as to whether the current proposals would require growers to participate in a "big burn" with acreage that is also a part of the 65% of registry permitted each grower. Mr. Nelson felt this to be the case and Commissioner Phinney felt that the acreage would be acreage already set aside from the 65% to be burned.

It was MOVED by Commissioner Crothers, seconded by Commissioner Phinney, and carried that the Commission adopt the Director's recommendation as amended by the Director and the Commission, and the proposals as amended by the Commission and the Director. The motion had the support of all present except Commissioner Somers who voted against the motion. It was Commissioner Somers view that the designation of authority to the Department in the proposals was too indefinite and should be set forth more fully in a preamble. Commissioner Richards was of the view that the testimony and Commission deliberation on the matter, available as public record, would serve adequately to inform as to Commission intent where such information might be needed.

COMMISSION REVIEW OF HEARING OFFICER DECISION: DEMURRER FILED ON BEHALF OF FAYDREX, INC.

It was MOVED by Commissioner Somers, seconded by Commissioner Richards, and carried with the support of all Commissioners present that the demurrer filed to the Department's Notice of Intent to Revoke some 64 subsurface sewage disposal permits held by Faydrex, Inc. be overruled. The motion was with regard to interlocutory Commission review of a hearing officer's decision on the demurrer. Commissioner Richards noted that the position of Senator Wingard, known as an environmentally oriented legislator, to support the "20-day" provision of ORS 454.655 argued that the Legislature did not intend by the "20-day" provision to forever bar the Commission from acting upon erroneous administration of the permit program by the Department or its agents.

AUTHORIZATION FOR PUBLIC HEARING ON RULE DRAFT: LICENSING REQUIREMENTS FOR THE INSTALLATION OF BUILDING DRAINS AND SEWERS

It was explained to the Commission by Mr. Kramer, and Mr. Clarence Kruger of the Attorney General's Office that an Attorney General's Opinion which prohibited the installation by those without a plumber's license of certain portions of the piping from buildings to sewers or subsurface disposal systems was being revised. This action, it was explained, made it appropriate for the Department to draft and take to public hearing a rule which clearly authorizes licensed installers to conduct certain installation work on the piping, particularly with regard to the piping from five feet outside the dwelling to its destination at the subsurface system of sewer connection point.

It was MOVED by Commissioner Somers, seconded by Commissioner Crothers, and carried with the support of all Commissioners present that the Department be authorized to initiate rule making procedures toward bringing to the Commission a proposed rule which would clearly delineate the licensing requirements for the installation of piping under the concurrent jurisdiction of both the Commission and the Department of Commerce.

EXECUTIVE SESSION: DISCUSSION OF MATTERS IN LITIGATION

The Commission went into executive session to discuss matters in litigation.

MOTION TO CONTINUE THE PUBLIC HEARING ON RULES GOVERNING INDIRECT SOURCES OF AIR POLLUTION

So as to avoid allowing the temporary rules governing indirect sources of air pollution to lapse from July 14, 1976 until August 27, 1976 (when the Commission would next meet), the Commissioners instructed the hearing officer to allow only seven days beyond the scheduled May 21 hearing for the submission of written materials for the record, such materials to be submitted directly to each Commissioner with no reporting requirement of the hearing officer.

There being no further business, the meeting was adjourned.