



State of Oregon Department of Environmental Quality

Minutes: 415th Oregon Environmental Quality Commission meeting

July 22-23, 2021: Teleconference (Zoom and telephone)

Thursday, July 22: 10 a.m. to 5 p.m.

- **Present:** Chair Kathleen George, Vice-chair Sam Baraso, Commissioner Molly Kile and Commissioner Wade Mosby

Welcome and meeting open

Chair George convened the meeting at approximately 10 a.m. Commissioners reviewed the meeting agenda and made no changes to the day's schedule. Chair George presented opening comments regarding health and environmental issues across the state and reflected on the challenges faced by people in Oregon due to the ongoing COVID-19 pandemic and the catastrophic effects of climate change.

A. Action: Meeting minutes

The commissioners reviewed the draft minutes from the May 20, 2021, regular EQC meeting.

Action: Approve the minutes of the May 20, 2021, regular EQC meeting as presented.

Move: Commissioner Kile

Second: Commissioner Mosby

The commission unanimously approved the action as presented.

B. Informational: Commissioner reports

Commissioners provided updates on their recent activities of interest to the commission and agency.

Commissioner Mosby provided updates about his work as liaison to the Board of Forestry, and changes with Oregon Department of Forestry leadership. He noted that he would be ending his service on EQC after this meeting and was proud of his work and the agency's direction over the past several years.

Commissioner Kile provided updates about her role as OWEB liaison, including a new position focused on climate change work, funding the board would provide for post-fire restoration and general water spending for 2021-23.

Vice-chair Baraso provided reflections on climate change in Oregon, and the need for DEQ's science-based work to lead for the state's adaptation and mitigation strategies.

Chair George discussed the draft MOU between DEQ and ODF for water quality protections on forested lands and need for strong agreements and collaboration when a new State Forester is hired. She noted that the annual Grand Ronde float was cancelled due to extremely low water levels and described her recent visit to the Mackenzie watershed and its resiliency after recent forest fires.

C. Action: Clean Water State Revolving Fund Loan Program rules

Justin Green, Water Quality Division Administrator, introduced the item. Lynn Barlow, Clean Water State Revolving Fund Loan Program Manager, described the program and background of the proposed rule amendments. Barlow outlined the public comment and engagement process, and discussed the proposed revisions. Barlow provided detailed information about Community Development Financial Institutions, a new potential type of borrower that would be allowed under the proposed rule revisions. Commissioners asked clarifying and informational questions throughout the presentation.

Action: Approve the proposed rules as seen on pages 1 through 36 of Attachment A of the staff report for this item, as part of OAR Chapter 340.

Motion: Commissioner Mosby

Second: Commissioner Kile

The commission unanimously approved the action as presented.

D. Informational: TMDL rules

Jennifer Wigal, Water Quality Division Deputy Administrator, introduced this item and provided general background about Total Maximum Daily Loads, also known as watershed management plans or TMDLs. Gene Foster, Watershed Management Section Manager, described the framework for TMDL development and provided detail on the elements included in a TMDL.

Wigal discussed proposed revisions to agency rules governing the way TMDLs are issued, and described the reasons for the revisions. Michele Martin, Water Quality Project Manager, described the proposed changes in detail and outlined the proposed schedule for the rulemaking development. Chair George asked informational questions about some portions of the proposed revisions.

E. Action: CAFO Memorandum of Understanding with Oregon Department of Agriculture

Justin Green, Water Quality Division Administrator, introduced this item and provided an overview of the presentation. Geoff Rabinowitz, Water Quality Permit and Program Development Manager, described the current roles and responsibilities of DEQ and ODA for Confined Animal Feeding Operations Program and water quality protections.

Wym Matthews, ODA CAFO Program Manager, described ODA's role in the program, and described the numbers and types of permits issued by DEQ and ODA for CAFOs. Rabinowitz provided additional program information, including a timeline of past program actions, and described the proposed MOU updates for commission consideration.

After the staff presentation, the commission opened a brief comment period specific to the proposed MOU updates. Six people presented comment.

1. Tarah Heinzen, Food and Water Watch/Stand Up to Factory Farms, present comments in opposition to the proposed MOU.
2. Bobbi Harold, Lane County dairy farmer, asked the commission to approve the MOU with some modification to the proposed two-step permitting process.
3. Mary Anne Cooper, Oregon Farm Bureau, provided support for the MOU revisions with some concerns about specific new elements.
4. Robert Kircher, Willamette Valley organic dairy producer, noted support for the revised MOU with concerns regarding manure management provisions and the proposed two-step permitting process.
5. Tami Kerr, Oregon Dairy Farmers Association, noted support for the MOU except for proposed two-step permitting process.
6. Brian Posewitz, Human Voters Oregon/Water Watch Oregon, presented general concerns with the state's CAFO Program and proposed MOU revisions.

Following the public comment, commissioners discussed the proposed MOU revisions and asked additional clarifying and informational questions. Deputy Director Feldon provided additional summary information for the commissioners, in addition to staff responses.

Action: Approve the 2021 Memorandum of Understanding for the Confined Animal Feeding Program, as seen in Attachment A of the report for this item, and authorize DEQ Director Richard Whitman to sign the MOU on behalf of the commission.

Motion: Commissioner Mosby

Second: Vice-chair Baraso

The commission unanimously approved the action as presented.

Recess

The commission recessed for lunch from approximately 12:30 to 1:30 p.m. Chair George reconvened the meeting at 1:34 p.m.

F. Informational: Budget and Legislative Session outcomes

Director Whitman introduced the item and noted his appreciation for the legislative team's work during the unique, and challenging, structure of the 2021 Legislative Session. Nancy Bennet, Office of Policy and Analysis Manager, gave an overview of the presentation's structure and a summary of the agency and state budget details. Annalisa Bhatia, Senior Legislative Advisor, described the context

and structure of the 2021 Legislative Session, held remotely in almost all instances due to ongoing public health risks from COVID-19.

Matt Davis, Abby Boudouris and Rian Hooff, Senior Legislative and Policy Analysts for the Air, Land and Water Quality Divisions, respectively, described the legislative outcomes specific to air, land and water. Bhatia and Bennett summarized legislative outcomes for central services and general management issues, and Bennet described some legislation that did not pass. Each presenter noted the future implementation work, based on the legislative events.

Commissioners asked clarifying and informational questions following the staff presentation, and affirmed their interest in receiving regular updates on budget and legislative matters for the agency.

G. Informational: Climate Protection Program updates

Director Whitman introduced the item and explained that today's presentation would be the final discussion with the commission prior to DEQ issuing draft rules for public review and comment. Director Whitman noted DEQ's intent to schedule one of the public hearings on the draft rules in front of the commission, so people could provide their testimony on the draft rules directly to EQC, as DEQ intends to bring final proposed rules for commission action at a special meeting in December 2021.

Colin McConnaha, Office of Greenhouse Gas Programs Manager, provided a summary of the Climate Protection Program under development by DEQ. He noted that the program is one part of the agency's work to fulfill directives for greenhouse gas emissions reductions under Governor Brown's Executive Order 20-04, issued in March 2020. He described key issues and discussions that staff have had with the rules advisory committee and other interested parties throughout the development process. Nicole Singh, Senior Climate Policy Advisor, presented detailed information about the Climate Protection Program, policy decisions and technical discussions to-date. Commissioners asked clarifying and informational questions throughout the presentation, and provided feedback on the program elements.

H. Public forum

At approximately 3:35 p.m., Chair George opened the meeting's public forum, a time during which any person may present comments to the commission on general environmental and public health matters relevant to EQC and DEQ work.

Thirty-five people presented comment. Names, affiliations if provided, and general notes on the comments are provided below.

1. Kathy Moyd, League of Women Voters of Oregon, commented on elements of the Climate Protection Program
2. Stan Dean, Oregon Association of Conservation Districts, commented on the exclusion of carbon sequestration in the Climate Protection Program's design

3. Susan Watkins, resident of Yamhill County, provided updates on Riverbend Landfill
4. Dan Serres summarized a letter sent recently by a coalition of CPP Rules Advisory Committee members with concerns for the program's design
5. Diane Hodiak, 350Deschutes, noted health consequences specific to vulnerable communities that are not addressed adequately in the CPP
6. Dr. Pat DeLaquil, Metro Climate Action Team, discussed climate issues and concerns with the CPP rules
7. Samantha Bayer, Oregon Farm Bureau, asked the commission to direct DEQ to appoint a rules advisory committee for the development of the TMDL rule revisions
8. Kjellen Belcher, Environmental Defense Fund, voiced concern with elements of the CPP proposals
9. Amy Schlusser, CPP Rules Advisory Committee member/Lewis and Clark Green Energy Institute, noted concerns about projected emissions reduction from fossil fuel sectors in the CPP rules
10. Tim Miller, CPP Rules Advisory Committee member/Oregon Businesses for Climate, expressed concerns about the Best Available Emissions Reduction approach and general reductions to be required of stationary sources in the CPP rules
11. Wesley Ward, SE Portland resident, expressed support for the Oregon Clean Truck rules in development, and general comments regarding diesel pollution from vehicles and rail sources
12. Betsy Hebert, North Coast Communities for Water Protection, described deficiencies in the water quality protections of the Oregon Forest Practices Act
13. Victoria Paykar, Oregon Transportation Policy Manager for Climate Solutions, expressed support for the Oregon Clean Trucks rules and low-NOx rules
14. Alan Journet, Southern Oregon Climate Action Now, expressed disappointment with the CPP committee process and proposed draft rules
15. Jenny Helfrich expressed support for the Oregon Clean Trucks rules and low-NOx rules
16. Nora Apter, Oregon Environmental Council, echoed prior comments regarding a coalition letter submitted regarding concerns with the CPP proposals
17. Professor Janet A. Lorenzen, 350Salem, presented comment on the CPP proposals, including data requests for current facility emissions
18. Bob Yuhnke, Elders Climate Action, asked for increased emissions reduction requirements in the CPP proposals
19. Sara Wright, Oregon Environmental Council, voiced support for the Oregon Clean Trucks rule
20. Sergio Lopez, Verde, voiced support for the Oregon Clean Trucks rule
21. April Snell, Oregon Water Resources Congress, requested the appointment of a rules advisory committee for the TMDL rules development
22. Patricio Portillio, Natural Resources Defense Council, voiced support for the Oregon Clean Trucks rule
23. Akash Singh, Union of Concerned Scientists, voiced support for the Oregon Clean Trucks rules
24. Patty Rincon, Northwest Energy Coalition, voiced support for the Oregon Clean Trucks rule

25. Annabelle Valdini, 13 year-old, voiced support for the Oregon Clean Trucks rule
26. Samantha Krop, Forest Waters Coalition, expressed concerns about water quality and protections in Oregon’s forested lands
27. Hieu Le, Sierra Club, voiced support for the Oregon Clean Trucks rule
28. Will Barrett, American Lung Association, voiced support for the Oregon Clean Trucks rule
29. Aimee Okotie-Oyekan, Eugene resident/NAACP of Springfield environmental issues staffer, voiced support for the Oregon Clean Trucks rule
30. Rebecca Lipton, Springfield resident, voiced general support for GHG emissions reduction and noted concerns with exemption some emissions in the CPP proposals
31. Michael Mattick, Eugene resident, noted support for many of the prior comments regarding the CPP proposals
32. Ramsey McPhillips, Yamhill County resident, expressed concerns with Riverbend Landfill, including questions regarding the facility’s closure permits
33. Ranfis [*last name and affiliation unclear on recording*] voiced support for the CPP proposals and Oregon Clean Trucks rule
34. Priya Choezom, Power Past Fracked Gas Coalition, voiced concerns regarding equity in the CPP proposals
35. Ilsa Perse, Stop the Dump Coalition of Yamhill County, expressed concerns about the closure of Riverbend Landfill and requested that DEQ send Yamhill County a copy of the EPA order and consent decree

Chair George closed the public forum at approximately 5 p.m.

Recess

Chair George recessed the commission at 5:05 p.m. until Friday, July 23, 2021.

Friday, July 23: 8:15 a.m. to 12:15 p.m., followed by an executive session

- **Present:** Chair Kathleen George, Vice-chair Sam Baraso, Commissioner Molly Kile and Commissioner Wade Mosby

Welcome and meeting open

Chair George reconvened the meeting at approximately 8:25 a.m. Commissioners reviewed the meeting agenda and made no changes to the day’s schedule.

I. Informational: State of Oregon’s Environment

Deputy Director Leah Feldon introduced the item and described the general framework of measures used by the agency to track a number of human health and environmental data sets and outcomes. She noted that the update is the second annual presentation, and that DEQ intends to present a summary of measures and data each year to the commission as a way to discuss progress and challenges to Oregon’s environment.

Lori Pillsbury, Laboratory and Environmental Assessment Division Administrator, described the lab's data collection and analysis work and related measures. Lydia Emer, Land Quality Division Administrator, discussed the data and measures for the collection of programs in the division, noting that the programs span a wide variety of activities to sustainably manage Oregon's materials and lands. Ali Mirzakhali, Air Quality Division Administrator, presented on the data and measures for the air programs. Colin McConnaha, Office of Greenhouse Gas Programs Manager, described the GHG-related measures that DEQ tracks. Justin Green, Water Quality Division Administrator, presented on the data and measures used for the agency's water programs.

Throughout the presentation, commissioners asked clarifying and informational questions about data, the measures and how the information is used by agency programs. Chair George provided summary comments regarding the amount of work still needed to protect fish, including Chinook and Steelhead, across the state due to increasing stream temperatures and habitat degradation.

J. Action: Regional Haze Division 223 rules

Ali Mirzakhali, Air Quality Division Administrator, introduced the item and provided an overview of Oregon's Regional Haze Program. Michael Orman, Air Quality Division Planning Section Manager, described the process used by DEQ to develop the proposed rule amendments. Karen Williams, Air Quality Planner, described the specifics of the rule proposal and related timelines for the program. Williams discussed the comments received and the agency's considerations for changes made in response to public comment. Orman described one change DEQ made to correct an inadvertent omission of a compliance option from the draft proposed rules, noting that the option aligns with EPA's guidance for the Regional Haze Program.

Action: Adopt the proposed rules as seen in Attachment A of the staff report for this item as part of Chapter 340 of the Oregon Administrative Rules; and approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040; and direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

Move: Vice-chair Baraso

Second: Commissioner Mosby

The commission unanimously approved the action as presented.

K. Action: Title V Program Fee Increases

Ali Mirzakhali, Air Quality Division Administrator, introduced the item and provided background information on the Title V program and its fee history. Jaclyn Palermo, Air Quality Operations Section Manager, provided additional information about the Title V permit program in Oregon.

Don Hendrix, Air Quality Operations Policy Analyst, described the proposed fee increases and timelines for the program. Hendrix noted the public engagement process, including comments received, for the rulemaking proposal.

Action: Adopt the proposed rule amendments as seen on pages 29 through 33 of the staff report for this item as part of Chapter 340 of the Oregon Administrative Rules.

Move: Vice-chair Baraso

Second: Commissioner Mosby

The commission unanimously approved the action as presented.

L. Action: Diesel retrofit rules (House Bill 2007)

Ali Mirzakhilili, Air Quality Division Administrator, introduced the item and presented general information about diesel pollution in Oregon. Mirzakhilili outlined the proposed rules and Rick Reznic, Air Quality Policy Analyst, described detailed background for the rule proposal. Reznic discussed the 2019 Oregon Legislature's directives for reducing emissions from diesel-fueled trucks in Oregon, and that the proposed rules were one element of a more comprehensive diesel emissions reductions approach for DEQ. Commissioners asked clarifying and informational questions throughout the presentation. Commissioner Mosby raised his concern that the proposal would not address important vehicle sectors that contribute significantly to diesel pollution.

Action: Adopt the proposed rules as seen on pages 30 through 49 of the staff report for this item as part of Chapter 340 of the Oregon Administrative Rules; and approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040; and direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

Move: Commissioner Kile

Second: Vice-chair Baraso

The commission approved the action as presented with three in support (George, Baraso, Kile) and one in opposition (Mosby).

M. Informational: Director's report

Director Whitman presented written and verbal updates on agency activities and other issues of interest to the commission. He opened the item by introducing Ximena Cruz Cuevas, Northwest Region Cleanup Program Coordinator, who presented on the work of an environmental justice workgroup at DEQ for which she is a co-lead. Cruz Cuevas discussed a summary of the group's objectives, current work and future plans. Director Whitman discussed the need for additional state and federal resources to support ongoing EJ work across the agency. He noted his intent to bring a full informational item on EJ to the September commission meeting, and the agency's general intent to provide updates on environmental justice work to the commission.

Director Whitman also provided some follow-up to issues raised during the Thursday public forum, including:

- Riverbend Landfill

- TMDLs being developed by rule, and affirming that DEQ would pursue rules advisory committee appointments for that process
- Feedback regarding the Climate Protection Program rule and program development

Commissioners asked clarifying and informational questions throughout the item, and provided their support for the EJ workgroup and its activities.

Adjourn

Chair George adjourned the regular meeting at 12:20 p.m.

Executive session

Following the regular meeting, the commission held an Executive Session, pursuant to ORS 192.660(2)(f) and (h), from 12:25 to 1:15 p.m.
