



State of Oregon Department of Environmental Quality

# Notes: Oregon Environmental Quality Commission meeting

## 427<sup>th</sup> regular meeting: July 20, 2023

### Thursday, July 20, 2023: 9 a.m. to 5 p.m.

- Present: Chair Kathleen George, Vice-chair Sam Baraso, Commissioner Greg Addington, Commissioner Molly Kile and Commissioner Amy Schlusser

#### **Welcome and meeting open**

Chair George convened the meeting at approximately 9 a.m. The meeting was held partially in-person, with commissioners and presenters at the Portland State Office Building, Room 1D, 800 NE Oregon St, Portland, OR 97232, and other attendees connected through Zoom. There were technical difficulties with Zoom at the beginning of the meeting which caused some delay. DEQ staff updated the public through GovDelivery and DEQ's webpage.

Note: Item A (draft meeting minutes) was removed from the meeting agenda. Meeting notes for May and July 2023 will be on the agenda during the Sept. 14, 2023, meeting.

#### **Item B. Informational: Director's report**

Director Leah Feldon provided an overview of agency activities and projects of interest to the commission. Feldon provided additional verbal updates on relevant matters not included in the written report for this item. Commissioners discussed the materials and asked clarifying and informational questions throughout the presentation.

#### **Item C. Informational: Budget and Legislative Updates**

Matt Davis, Policy and External Affairs Manager and DEQ's Legislative Affairs Team briefed the commission on outcomes of the 2023 Legislative Session. Updates included a summary of DEQ's 2023-25 Legislative Approved Budget and other policy measures adopted by the legislature impacting the agency's work. Commissioners asked clarifying and informational questions throughout the presentation.

*The Commission recessed from approximately 10:40 to 10:55 a.m. Due to a malfunction of the recording process, the meeting recording began at Item D.*

#### **Item D. Action: Diesel Emissions Identification Program**

Ali Mirzakhali, Air Quality Division Administrator, introduced Rachel Sakata in her new role as Transportation Section Strategy Manager and provided an overview of the new program. Sakata provided additional details about the new section and strategies designed to allow DEQ to focus on emissions from the transportation sector while both being able to reduce air quality and greenhouse gas emissions. Sakata added that the section will work closely with other agencies to make the transition to cleaner transportation in an equitable way.

Eric Feely, Air Quality Planner, provided an overview and detailed background on what led to the Diesel Emissions Identification Program proposed rules. He referenced HB 2007 (2019) that directs the commission to adopt a program, by rule, that will allow for owners and operators of diesel-powered construction equipment to demonstrate the emissions profile of each piece of equipment, and in turn

receive emission control labels from DEQ that will reflect those profiles. Amina Foster, Air Quality Planner, provided more detailed information on how the voluntary program would work. A key component would involve DEQ issuing labels for owners and operators to place on the outside of equipment or vehicles to reflect the diesel-powered equipment's emissions profile which would make it easier for interested parties to identify key characteristics of the engines inside of them.

Commissioners discussed the materials and asked clarifying and informational questions throughout the presentation. Commissioner Schlusser asked about the visibility of the stickers and coded system. Commissioner Baraso asked clarifying questions about reporting requirements. Chair George expressed appreciation for staff efforts to make emission profiles easier to track and for taking a cooperative approach. Commissioner Kile commented on the optional participation and no fees and asked Director Feldon if DEQ will have a mechanism to ensure the program is operating and labels are accurate.

**Action:** Adopt the proposed rules, creating division 269, in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

**Move:** Commissioner Schlusser

**Second:** Commissioner Baraso

***The commission unanimously approved the motion as presented.***

#### **Item E. Action: Title V Fee Increase Temporary Rules**

Ali Mirzakhali, Air Quality Division Administrator, introduced the item with Aeron Teverbaugh, Senior Legislative and Policy Analyst, who presented a proposal for a temporary rulemaking to implement a Title V Fee increase subject to approval from the legislature during the 2023 session. The presentation included an overview of the Title V program and funding, HB 3229, HB 5018 and Policy Option Package 110; proposed temporary rule and permanent rulemaking to restore the Title V program.

Commissioners asked clarifying questions on revenue and budgets, the cost-benefits and public health. Director Feldon affirmed the work ahead involves ongoing stakeholder engagement to develop a more sustainable system on fee increases that's predictable for businesses and the agency. Feldon added additional context about the proposal which addresses the 100 largest, often most complex and certainly the highest emitting facilities in the state.

**Action:** Adopt temporary rules to implement House Bill 3229 as well as increase Title V fees. HB 3229 increased the Title V base fee and per ton emission fee. DEQ recommends increasing other Title V fees by a commensurate 43% as authorized by the legislatively approved FY 2023-25 DEQ budget, HB 5018. The increase would be effective Aug. 1, 2023.

For the reasons described in the DEQ staff report supporting this proposal, find that the failure to act promptly to adopt temporary rules will result in serious prejudice to the public interest and the interests of Title V permit holders; and 2. Adopt the temporary rule amendments attached to the DEQ staff report as Exhibit A as part of Chapter 340 of the Oregon Administrative Rules, to increase Title V fees, effective August 1, 2023."

**Move:** Commissioner Schlusser

**Second:** Commissioner Baraso

***The commission approved the motion as presented with Addington opposed.***

#### **Working lunch and executive session**

Chair George recessed the commission for a working lunch and executive session from approximately noon to 1:10 p.m. The executive session was held pursuant to ORS 192.660(2)(f) and (h).

#### **Item F. Public forum**

July 20, 2023, EQC meeting minutes

Page 2 of 5

Chair George opened a public comment opportunity at approximately 1:10 p.m. on general topics related to Oregon's environment. A total of 11 people presented comment during this item in-person and via Zoom. A summary of their comments is below, associated with individuals' names and affiliations, if provided.

When the topic of pending rulemaking, Gary Vrooman, EQC legal counsel, interjected to clarify the public comment period for the seismic stability rules closed on July 12 and, therefore, the commission cannot consider new comments on this rulemaking. Vrooman noted official input must be provided during the public comment period for proposed rules. He further explained the only public comment commissioners are allowed to consider must be that which was recorded during the official public comment period and not during an EQC public forum.

Throughout the public input portion of the meeting, Chair George reiterated the public is allowed and encouraged to share what's on their mind, but to protect the integrity of the rulemaking process, the commission cannot consider any additional input on pending rulemakings after the official public comment period for the rulemaking is closed.

1. Melanie Kraut, retired obstetrician who works on climate and health issues, fuel tank seismic stability rules/Critical Energy Infrastructure (public comment closed July 12, 2023)
2. Ann Turner, public health background, fuel tank seismic stability rules/Critical Energy Infrastructure (public comment closed July 12, 2023)
3. Dr. Theadora Tsongas, public health background, fuel tank seismic stability rules/Critical Energy Infrastructure (public comment closed July 12, 2023)
4. Dr. Anne Turner, fuel tank seismic stability rules/Critical Energy Infrastructure (public comment closed July 12, 2023)
5. Nora Lehman, Climate Protection Program 2023 rulemaking, rules under development (public comment period will close Sept. 22, 2023)
6. Noel Stuter Speedback, Climate Protection Program 2023 rulemaking, rules under development (public comment period will close Sept. 22, 2023)
7. Joel Dyer, Benton County, follow up request for review, reporting and renewal of the solid waste landfill permit for Coffin Butte Landfill
8. Dr. Pat Delaquil, Metro Climate Action Team, Climate Protection Program 2023 rulemaking, rules under development (public comment period will close Sept. 22, 2023)
9. Jane Stackhouse, Metro Climate Action Team, Climate Protection Program 2023 rulemaking, rules under development (public comment period will close Sept. 22, 2023)
10. Grant Johnson, Mattress Recycling Council, fiscal impacts of Mattress Recycling Act
11. Mitch Walgomatt, retired DEQ Eastern Region Administrator, serves on Board of Oregon Rural Action, nitrate contamination in the Lower Umatilla Basin, groundwater testing, public outreach and public health

### **Working lunch and executive session**

Chair George recessed the commission for a working lunch and executive session from approximately noon to 1:15 p.m. The executive session was held pursuant to ORS 192.660(2)(f) and (h).

**Item G. Action: Mattress Stewardship Rulemaking**

Lydia Emer, Land Quality Administrator, introduced DEQ’s Materials Management’s product stewardship program and presenters Cheryl Grabham, Manager of Product Stewardship Program, and Rachel Harding, Product Stewardship Specialist. Harding and Grabham presented draft rules for implementation of the Mattress Stewardship Act, SB 1576 (2022). The proposed rules establish an annual fee, delegate authority to DEQ and clarify requirements of a stewardship organization. Harding described how, if adopted, the rules would create a statewide system for collection and management of discarded mattresses as well as follow a consumer-funded product stewardship model. Commissioners asked clarifying and informational questions throughout the presentation, including questions about program costs and oversight, education for consumers, retailers, and others at the time of sell, and requirements to ensure public awareness of the program. Harding and Grabham addressed commissioners’ concerns around various aspects of the program’s intent, some of which are dictated by statute.

**Action:** DEQ recommends that the Environmental Quality Commission adopt the proposed rules as seen in Attachment A for the Mattress Stewardship Act, into Chapter 340, Division 98 of the Oregon Administrative Rules

**Move:** Commissioner Baraso

**Second:** Commissioner Schlusser

*The commission unanimously approved the motion as presented.*

**Item. H. Action: Waste Tire Rulemaking**

Lydia Emer, Land Quality Administrator introduced the item and Stephanie Caldera, Policy Analyst for Materials Management program and former commission assistant. Emer provided background on waste tire rules. Caldera presented proposed rule revisions to relocate these rules from Division 64, a stand-alone division specific to waste tires, into Divisions 93, 96 and 97, relevant divisions that pertain to other types of solid waste management. The proposal would update fee types and align the requirements with Oregon Fire Code. Commissioners asked clarifying and informational questions, including questions about the public notice and comments. Director Feldon referenced recent concerns from stockpiles of tires. Commissioner Baraso expressed appreciation for the cleanup of the rules.

**Action:** Adopt the proposed rule revisions as seen in Attachment A of the staff report for this item as part of Oregon Administrative Rules Chapter 340

**Move:** Commissioner Addington

**Second:** Commissioner Schlusser

*The commission unanimously approved the motion as presented.*

*The Commission recessed from approximately 3 to 3:15 p.m.*

**Item I. Action: 1200-Z permit, Industrial Stormwater General Permit Minor Corrections**

Jennifer Wigal, Water Quality Administrator, introduced the item and Krista Ratliff, Senior Permit Writer. Ratliff provided background on the Industrial Stormwater General Permit, No.1200-Z permit, what facilities are covered, what the requirements are or should be, why an amendment is necessary at this stage, and why this presentation is the correct process for the proposed amendment. Ratliff noted the EQC adopted the 1200-Z general permit into rule in 2007. When the EQC adopted the permit into rule in March 2021, DEQ inadvertently omitted a clause which created regulatory ambiguity. She presented details on the consequences if the proposed rule amendment to restore the clause is not adopted. There were not questions or discussion.

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

**Action:** Adopt the proposed rule amendments in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

**Move:** Commissioner Schlusser

**Second:** Commissioner Addington

*The commission unanimously approved the motion as presented.*

**Item J. Informational: Integrated Water Resource Strategy**

Jennifer Wigal, Water Quality Administrator introduced the item and the presenter, Crystal Grinnell, Integrated Water Resource Specialist with the Oregon Water Resources Department. WRD is leading an inter-agency IWRS project team, which includes DEQ, to update the 2017 Statewide IWRS which is required every five years. Grinnell provided an introduction to the IWRS, the timeline and public engagement in multiple languages, and shared some results of a public survey that received 1,700. Commissioner Baraso inquired about the specific agency partners. Chair George shared observations on the importance of the intersection and focus. Wigal provided additional information on agency roles and water rules. Commissioner Schlusser asked about the selection of locations for public meetings and Grinnell addressed some of the challenges selecting locations. Chair George remarked on Oregon’s dire situation in terms of losing beneficial uses and a need for more government-public conversation; the role and promise of TMDLs; and the focus on quantity v. quality. Commissioner Addington asked about additional storage and growing needs. Discussion continued about the following: integration of land use and water quality and quantity; improved inter-agency coordination; alignment of resources with strategies and actions; climate change and hydrograph; more effective communications.

The draft report is expected to be out for public review in October 2023.

**Item K. Informational: Temperature TMDL Replacement Project - Lower Columbia-Sandy Subbasin and Willamette Subbasins`**

Jennifer Wigal, Water Quality Administrator introduced the item and Gene Foster, Watershed Management Manager. They briefed the commission on a proposed rule adoption for the commission’s consideration in November 2023. They described the proposed rule which addresses two temperature Total Maximum Daily Loads, the Lower Columbia-Sandy Subbasin and the Willamette Subbasins. Commissioners asked clarifying and informational questions, including questions about the public notice and comments.

Wigal announced this meeting was the last time Foster will appear before the commission on behalf of DEQ as he is retiring. The commissioners shared words of appreciation and acknowledged his long-career and important contributions to DEQ and Oregonians.

Following Item K, commissioners discussed logistics and process notes for next steps, and affirmed that the next regular meeting would be in September 2023, location to be determined.

**Adjourn:** Chair George adjourned the meeting at approximately 5:15 p.m.

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