



State of Oregon Department of Environmental Quality

Notes: Oregon Environmental Quality Commission meeting

426th regular meeting: May 18-19, 2023

Thursday, May 18: 9:30 a.m. to 4:00

- Present: Chair Kathleen George, Vice-chair Sam Baraso, Greg Addington

Welcome and meeting open

Chair George convened the meeting at 9:30 a.m.

A. Action: Draft Meeting Minutes

Commissioners reviewed minutes from the Nov. 9, 2022 special, Nov. 16-17, 2022 regular, Dec. 9, 2022 special, Jan. 19, 2023 regular, Feb. 9-10, 2023 special and March 17, 2023 regular meetings.

Action: Approve minutes from all stated meetings as presented.

Move: Chair George

Second: Vice Chair Baraso

The Commission approved the action unanimously.

B. Informational: Director's Report

Each year the State and DEQ recognize employees for their public service. The Director spoke briefly about each nominee: Mark Bentz, Brady Roark, Julie Harvey, Blair Adams, Ellie Brown, Franziska Landes and Laurie Gordon. Three nominees were selected by Governor Kotek for additional recognition at the state-level: Blair Adams, Ellie Brown and Fraziska Landes. Chair George thanked the nominees for their work and dedication.

Director Feldon introduced Shannon Davis as DEQ's Interim Deputy Director while a recruitment is underway for a permanent Deputy Director. Chair George thanked Shannon for stepping into this role.

The agency is working earnestly toward becoming an intentionally antiracist, diverse and inclusive organization. In late 2021, DEQ entered into a contract with a consultancy group, Engage to Change, to help the agency in three key areas: consulting, facilitation and training. The consultants are creating an organizational assessment for the agency which will be expected to be published in June 2021. This assessment will inform many other pieces of work within the agency such as the Affirmative Action Plan, DEI Plan and Strategic Plan. Engage to Change is not responsible for the Strategic Plan but is consulting with DEQ throughout the planning process to ensure the foundation of the plan is grounded in principles of antiracism. By June 1, 2023 agencies had to report to the Governor's Office with answers to five questions about how they plan to approach their Strategic Planning work, which were included in the Director's Report. Strategic Plans themselves are expected to be submitted to the Governor's Office by June 1, 2024.

Administrator's Ali Mirzhakalili, Lydia Emer, Jennifer Wigal, David Anderson, Keith Andersen and Lori Pillsbury provided verbal updates about their respective divisions in addition to updates within the Director's Report.

- For Western Region, Vice Chair Baraso inquired about staging of the water treatment facility build out at Lazy Days Mobile Home Park and how it may relate to the Three Basin Rule. Administrator Andersen noted the idea is to move forward with getting the project off the ground sooner rather than later and, if the site is built out to more than 5,000 GPD, it will trigger the Three Basin Rule.
- For the Laboratory, Director Feldon noted the Laboratory hosted Take Your Kids to Work Day and it was very well organized and a complete success. With a special thank you to Lori and lab staff for putting the event together.

Director Feldon noted future reports will include updates on work done by the Environmental Justice Workgroup. Conversations have been occurring about new possible Environmental Justice positions and implementing them into the agency structure. She also met with the DEI Council recently who shared their work, vision and perspectives.

C. Information: Budget and Legislative Updates

Matt Davis, Interim Policy & External Affairs Manager, noted dynamics influencing the legislative session.

- The revenue forecast came out on May 17, 2023 with a better-than-expected forecast. The state is bringing in more revenue than economists predicted.
- Ways and Means Committee has a growing backlog of work.
- The Senate is still not holding floor sessions due to lack of quorum.
- The vast majority of bills, including DEQ's, are bipartisan.
- Across the board there is new leadership within the Legislature.

The Governor's Recommended Budget makes key general fund investments in Environmental Justice and climate work. DEQ presented to the Natural Resources Ways & Means Subcommittee on the agency budget in March and it went well but it has not moved out of the Subcommittee yet.

Aeron Teverbaugh, Abby Boudouris and Rian Hooff provided updates on air and water specific policy highlights.

Davis spoke about three key milestones the agency is looking forward to before the legislature adjourns, including the second chamber work session deadline, DEQ's Budget Work Session and the Constitutional Sine Die date.

D. Informational: Fuel Tank Seismic Stability Rulemaking

Senate Bill 1567 passed in 2022, directing DEQ to work with DOGAMI and ODOE to address potential risks from Oregon's largest fuel distribution terminals in the event of a 9.0 magnitude earthquake. Studies illustrated damages from fuel spill after a seismic event of this magnitude would have an enormous negative environmental and environmental justice impact. A rulemaking advisory committee has been working to implement SB 1567, working under a very ambitious timeline. DEQ staff outlined the committee's meeting cadence and focus of each meeting, the rule framework, a risk mitigation

implementation timeline, residual risk and proposed fee structures. DEQ plans to present the proposed Fuel Tank Seismic Stability rule for the commission action at the September 2023 EQC meeting.

Chair George asked if DEQ has the capacity to respond to spills of the magnitude that is envisioned in Oregon. Abby stated DEQ's emergency response team is small but mighty. The biggest concern for emergency response is funding. Funding requests have historically not been successful passing the legislature to fully build out for this type of event. The commission voiced support for funding for emergency response positions.

F. Informational: Fish and Aquatic Life Use Rulemaking Update and Joint Commission Discussion

Chair George welcomed ODFW Board Chair Mary Wahl, Vice Chair Jill Zarnowitz, and Director Curt Melcher to the meeting.

The commission heard about the objectives of undertaking this rulemaking, its scope, and related background on water quality standards and beneficial uses. The commission also received information on the work performed toward this rulemaking in the last year including data and how the data is being used, as well as proposed amendments and results, and key issues and challenges the rulemaking advisory committee is working through. With the rule out for public comment, Chair George confirmed this agenda item is a broad discussion, inviting public comment through the scheduled public comment period of the meeting.

Commissioner Addington requested clarity on how processes will change when criteria and standards are updated and landowner engagement. Chair George noted the importance of revisiting the designations because sometimes there are changes in landscape, such as migration corridors. Vice Chair Baraso inquired on the anticipated cycle of updating designations.

G. Environmental Quality, and Fish and Wildlife Cross-Communication Conversation

The EQC and ODFW commission members held an open discussion about the importance of collaboration between the agencies on different nexuses of work. Topics discussed were protection of cold-water refuges, data collection and information sharing opportunities, implementation plans and salmon reintroduction in the Klamath Basin.

Break: *The commission recessed for a short break.*

H. Public Form

Chair George opened a comment opportunity specific to the presentations and information in the agenda. Four people presented comment. A summary of comments is below, associated with individuals' names and affiliations, if provided.

1. Nancy Hiser, resident of Linnton neighborhood and member of the Rules Advisory Committee for Fuel Tanks and Seismic Stability. Linnton is the home of the CEI Hub where hazardous chemicals are transported by rail, tankers and trucks and transloaded to more than five hundred active storage tanks in the vicinity. Linnton Neighborhood Association has tried to resolve concerns about harmful emissions, and what appears to be incorrect reporting from the CEI

hubs industries, directly with DEQ’s Cleaner Air Oregon program. Linton Neighborhood Association’s repeated requests for additional testing and sampling in the community have been rejected. Linnton will now address these concerns with a public campaign, focused on DEQ’s inaction.

2. Rick Hafley, retired DEQ employee in water program, is concerned the overall effect of the new aquatic life use rules will lower water quality standards for dissolved oxygen and temperature, which will affect resident trout spawning.
3. Sarah Cloud, Deschutes River Alliance, noted the process and rules for aquatic life use rulemaking should not be about making work of agencies easier, it’s about protecting the aquatic life of Oregon. DEQ’s new rules fail to follow ODFW’s spawning use tables for resident trout.
4. James Fraser, Trout Unlimited, the organization generally supports most adjustments and was a member of the Rules Advisory Committee for this rulemaking but there is concern about the proposal to change the PH criteria for Crooked River and Trout Creek to a less stringent standard.

Adjourn

Chair George adjourned the meeting at 3:31pm.

Friday, May 19: 9 a.m. to 4:00

- Present: Chair Kathleen George, Vice-chair Sam Baraso, Greg Addington, Amy Schlusser

Welcome and meeting open

Chair George convened the meeting at 9:00 a.m.

I. Informational: Powder Basin TMDL

The Commission received a brief overview on the Total Maximum Daily Load process, specific details about the Powder River Basin bacteria TMDL, overview of input and policy considerations as well as next steps with the rule advisory committee and public engagement. This TMDL is set to be released for a public comment period and hearing in June through July 2023 and will be brought to the Commission for consideration in the Fall. Upon adoption by the Commission, the TMDL will be submit to EPA with hopes of approval by December 2023.

Commissioners asked about management strategies listed in the presentation, noting micro-irrigation in Baker County doesn’t seem practical, and flood irrigation may even be appropriate at times. In future presentations, it will be helpful to keep in mind context of slides and consider illustrating positive scenarios, which are happening as well.

Staff were asked if tribes, specifically Nez Perce and Burns Paiute have been able to participate in the process. DEQ has been in discussions with both tribes with long-standing engagement around bacteria in the Powder Basin with the Nez Perce tribe.

Staff were asked if an agency or entity is taking the lead on identifying the potential funding streams and connection the funding to landowners. Historically, landowners and/or local entities/communities work to identify funding sources and complete the application. DEQ is hearing from designated management agencies and landowners that the processes are overly burdensome. DEQ is also aware of a lot of federal funding coming in. DEQ is in discussion with Oregon Watershed Enhancement Board and Natural Resources Conservation Service to help them better understand DEQ's priorities and participate in their process more locally and in subcommittees.

J. Action: Delegation of certain Water Quality Fee Annual Adjustments to the Director

The EQC has statutory authority to increase water quality permit fees annually, specifically related to National Pollutant Discharge Elimination System and Water Pollution Control Facility permits, and also has the authority to delegate this authority to the Director of the department.

Action: DEQ recommends the Oregon Environmental Quality Commission delegate the authority to adopt rules for the 2023 Water Quality Fee Increase Rule to Director Feldon.

Move: Commissioner Schlusser

Second: Vice Chair Baraso

The Commission approved the action unanimously.

K. Informational: Commissioner Reports

Commissioners provided verbal updates of their recent activities of interest to DEQ and the commission.

- Commissioner Schlusser: Recently was in D.C. at a Summit between federal and state energy departments with a focus on federal funding that is coming available for clean energy and energy efficiency. Although this is an opportunity, there is a lot of money coming in from different sources with different entities responsible for dispersing and different eligibility requirements. It is an opportunity but also a tremendous challenge to coordinate so those actualize into real, positive impacts for people in the state.

L. Informational: Onsite Program Wildfire Recovery and the Three Basin Rule

The onsite septic program has been working to provide assistance to property owners and communities impacted by the 2020 wildfires. This includes technical assistance and financial assistance, prioritizing wildfire recovery permits and working with community groups in affected areas to understand on the ground needs. In 2021, the Oregon Legislature allocated 15 million dollars of pandemic funding to DEQ to assist with septic repair and replacement for those affected by the 2020 wildfires. Staff described lessons learned from the 2020 wildfires and how DEQ adjusted its approach to wildfire response.

The commission was briefed on the Three Basin Rule, which protects drinking water coming from the Santiam, Clackamas and McKenzie River basins. As wildfire affected communities rebuild, it is likely

some of the communities will require large onsite septic systems, whose permit applications will need to come before the EQC for consideration of approval.

M. Lunch and Wildfire Recovery Site Visit

During lunch, DEQ staff from the Western Region offices gave the commission a briefing on Wildfire Recovery Update and Applications under Oregon's Three Basin Rule. Staff provided a preview on a tour beginning after lunch. The tour was arranged to provide the commission the opportunity to see areas impacted by Oregon's September 2020 wildfires, get an update from the local watershed council on associated water quality impacts to the North Santiam River, hear about local fire recovery efforts, and receive an overview of wastewater treatment projects. The commission toured three sites: Parksaddle Park, Gates Fire Hall, and Mill City wastewater treatment system. Staff and invited guests provided information about recovery activities to improve water quality and support current and future rebuilding efforts. There was no commission action associated with tour. The goal was to help the commission understand the importance of the proposed wastewater treatment projects for fire recovery and economic development. The proposed wastewater treatment projects will require permits that comply with the Three Basin Rule.

The North Santiam Watershed Council's Brandon Hilbrandt discussed the health of the watershed pre- and post-wildfire and highlighted the restoration project at Packsaddle Park. DEQ's Basin Specialist, Grace Goldrich-Middaugh discussed general TMDL implement plans for communities in the North Santiam Canyon.

The Gates Rural Fire District built the fire hall about 11 to 12 years ago. It serves as a community hall in an area of limited resources. During 2020 wildfires, the volunteer firefighters worked hard to save this valuable community asset. The 2020 wildfires destroyed 160 homes, 14 businesses and 259 outbuildings in the Gates district.

North Santiam Long-Term Recovery Manager, Kevin Dial discussed recovery efforts in the canyon. Marion County's Brian Nicolas and Chris Einmo are the project managers for the two key infrastructure projects - Mill City and Gates wastewater project (A) and Detroit and Idanha wastewater project (B). These wastewater projects would require compliance with the Three Basin Rule

The City of Mill City owns and operates a community wastewater system. The wastewater collection and water pollution control facilities were constructed in the early 1990's prior to revision of the Three Basin Rule to include water pollution control facilities. No other major improvements have been completed for the system since 1995. Mayor Tim Kirsch, Public Works Director Russ Foltz, and DEQ's Senior Wastewater Specialist Dan Wiltse discussed the status of the current treatment system and the need to increase its capacity. A change to Mill City treatment capacity will require a permit modification that will trigger the Three Basin Rule.

Guest list included:

- Kathleen George, Chair
- Sam Baraso, Vice-Chair
- Molly Kile, Commissioner

Draft _____
Approved as presented x
Approved with amendments _____

- Greg Addington, Commissioner
- Leah Feldon, Director
- Gary Vooman, DOJ
- Mike Kucinski, Deputy Water Quality Division Administration
- Deb Mailander, Onsite Manager
- Dan Wiltse, Senior Onsite Specialist
- Jennifer Flynt, Communication
- Harry Esteve, Communication Manager
- Dylan Darling, Communications
- Mary Camarata, Regional Solutions Team.
- Brandin Hilberandt, Watershed Council
- Grace Goldrich-Middaugh, DEQ's Basin Specialist
- Gates' Mayor Brian Gander
- Kevin Dial, Long Term Fire Recovery
- Chris Einmo, Marion County Project Manager
- Brian Nicolas, Marion County Public Works Director
- Mill City's Mayor Tim Kirsch,
- Laura Conroy Mid Valley Council of Government Associate Project Manager,
- Scott Dadson/Mid Valley Council of Government Executive Director
- Russ Foltz, Mill City Public Works Director
- Stacie Cook/Mill City Recorder
- Dave Kinney/Mill City Planner

Adjourn

Chair George adjourned the meeting at approximately 5 p.m.