

# Notes: Oregon Environmental Quality Commission 428th Regular Meeting, Sept. 14-15, 2023

## Thursday, Sept. 14

Present: Chair Kathleen George, Vice-Chair Sam Baraso, Commissioners Molly Kile and Amy Schlusser.

The meeting was held by Zoom and in-person at the Hatfield Marine Science Center, Library Seminar Room in the Guin Library (2030 SE Marine Science Drive, Newport, OR 97365). Zoom details were provided in GovDelivery bulletins, in a news release and on the webpage.

### Welcome and meeting open

At approximately 9 a.m., Chair George opened the meeting and reviewed DEQ's mission statement and the day's agenda.

### Item A: Draft meeting minutes

Commissioners approved proposed draft minutes from the May 2023 and July 2023 meetings.

Action: Approve minutes of all slated meetings as presented.

Move: Chair George

Second: Vice-Chair Sam Baraso

*The Commission approved the action unanimously.*

### Item B: Director's Report (Informational)

DEQ Director Leah Feldon and staff presented written and verbal updates on agency activities and other issues of interest to the commission.

Director Feldon acknowledged this is the last EQC meeting with Commissioners Kile and Addington. The Governor has put forward one nominee, Mark Webb. She noted Mark's confirmation hearing before the Senate is on Sept. 27.

#### 1.1 DEQ Strategic Plan Update

Director Feldon updated the commission on the agency's development of a strategic plan led by a steering committee and with our consultant, Engage to Change. The Chair asked if there will be opportunities along the way to get input from staff and discuss milestones. Director Feldon confirmed staff engagement is built into the plan. She said currently, the steering committee is mapping out a timeline and next steps for internal engagement, developing our vision, mission and goals, and writing the plan for submission to the commission in April 2024.

The commission heard about Director Feldon's tour of the proposed Grassy Mountain mine. She was joined by Sen. Finley and Rep. Owens and staff from the Department of Fish and Wildlife and the Department of Geology and Mineral Industries. Director Feldon noted this is significant because it's the first time Oregon has had a chemical mine and a need to use chemical mine rules.

Chair George asked Director Feldon if DEQ has the staff and resources for future monitoring, permitting and implementation of rules. Director Feldon expressed the same concerns and reported that because it's a new topic, DEQ is exploring options and conferring with other states. Chair George requested updates at future meetings.

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Approved as presented  \_\_\_\_\_  
Approved with amendments \_\_\_\_\_

Director Feldon also reported on attending and speaking at a meeting of the Association of Clean Water Agencies and attending an eastern region economic summit in LaGrande to share what DEQ does and to hear their concerns about issue DEQ needs to pay attention to.

### **2.1 Community Climate Investment Entity Update**

Director Feldon introduced Colin McConnaha, DEQ Office of Greenhouse Gas Programs Manager, to provide an update to the commission on the Community Climate Investment Entity. The commission heard details about the objective, process and selection of Seeding Justice as the Community Climate Investment entity for the program.

### **3.1 EPA Action on National Ambient Air Quality Standard for Ozone**

The commission heard about the U.S. Environmental Protection Agency's plans to review the National Ambient Air Quality Standards for ozone in lieu of completing its reconsideration of the Trump Administration's October 2020 decision to retain the existing ozone NAAQS. Director Feldon said more information will be available after the agency convenes a public science and policy workshop in spring of 2024.

### **3.2 Heavy-Duty Vehicle Low NOx Omnibus Standard**

Director Feldon updated the commission on DEQ's plans to propose temporary rules to ensure the Heavy-Duty Vehicle Low NOx Omnibus Standard aligns with California's final amendments to their Heavy-Duty Engine and Vehicle Omnibus Regulation. She shared that DEQ also plans to bring a proposed permanent rule to the EQC prior to the expiration of the temporary rule in 2024 to bring more certainty to engine manufacturers and allow for the sale of new trucks in 2024.

### **4.1 CZARA/CNPCP Project Update**

At approximately 9:45 a.m., Director Feldon introduced Jennifer Wigal, DEQ Water Quality Administrator, and Josh Seeds, DEQ Forest Water Quality Lead, to present an update on the Coastal Zone Management Act (CZMA) and Coastal Zone Amendments and Reauthorization Act (CZARA). Josh provided detailed updates on this complex issue and elaborated on the relevant sections within the Director's Report.

Chair George said this is a high priority for her and she would like to know more about how we're resolving water quality issues. She said as water quality regulators, it should also be DEQ's priority to resolve these issues by continuing to work with sister agencies. She emphasized how critical this issue is for the protection of aquatic species for which many of the water quality standards have been established. She raised concern over working against our water quality objectives and our species survival objectives. Chair George and Commissioner Schlusser expressed appreciation for the agency's work, especially Josh's work. Director Feldon added that DEQ is in a new position to do this work, which is very interagency dependent. She said she's optimistic about working with EPA and others on this and said it's moving in a good direction. She assured the commission that DEQ will provide regular updates.

### **4.2 Aquatic Life Toxics Criteria Rulemaking 2024**

DEQ is initiating a rulemaking to update Oregon's Aquatic Life Water Quality Criteria for Toxic Pollutants to adopt new criteria and update the state's aquatic life criteria based on EPA's most recent recommendations. This project was identified as a high priority project in the 2021 – 2024 Triennial Review Work Plan, which included public input. DEQ plans to present a rulemaking package to the EQC in mid-2024.

#### **4.4 ODF-DEQ MOU on Collaboration to Achieve Water Quality Goals Implementation Progress Update**

Jennifer Wigal, DEQ Water Quality Administrator, told the commission she wanted to make sure the commissioners know DEQ and the Department of Forestry are making progress on achieving water quality goals on non-federal forestlands in Oregon following updates to the Memorandum of Understanding on Dec 9, 2021. She noted the MOU included a commitment to periodically evaluate implementation progress and report to the EQC and the Board of Forestry.

In the interest of time, Director Feldon proposed going directly to item 6.0 of the Director's report for the next verbal report. Chair George approved.

#### **6.0 Northwest Region**

At 9:57 a.m., Director Feldon introduced Christine Svetkovich, DEQ Northwest Region Administrator, who summarized an incident that occurred on July 2023 when a fire broke out from unknown causes at the former K-Mart site in northeast Portland. City of Portland Parks and Recreation staff tested material from the area, which came back as containing asbestos. She said the response involved DEQ, federal and local agencies forming a joint incident command. She reported that none of the subsequent sample results were confirmed for asbestos which changed DEQ's role and local agencies stepped in. Chair George, Director Feldon and Christine expressed appreciation for staff, programs, communications and emergency response for their work.

#### **7.0 Western Region**

Director Feldon introduced Keith Anderson, DEQ Western Region Administrator, who updated the commission on an incident involving a diesel-containing wood preservative spill from a retort at the Stella-Jones facility, a former Superfund site in Sheridan, Yamhill County.

#### **Item C: Fuel Tank Seismic Stability Rules (Action)**

At approximately 10 a.m., Abby Boudouris, acting DEQ Land Quality Administrator, introduced the action item and staff. Mike Kortenhof, DEQ Fuel Tanks Section Manager, and Svetlana Lazarev, DEQ Program Analyst, presented proposed rules for implementation of Senate Bill 1567 (2022) that requires development of a program and rules to evaluate and mitigate the seismic vulnerability of bulk oils or liquid fuel terminals in Columbia, Lane and Multnomah counties and minimize the risk to people and the environment. Svetlana briefed the commissioners on details about the proposed rules. Vice Chair Baraso asked for clarification on storage capacity. Mike explained the enforcement and classification of violations elements of the proposed rule. He said this is the final part of the rule proposal and involves identifying the individual violations. He talked about the classes of violations and explained the penalty matrix.

Commissioner Schlusser asked clarifying questions about implementation plans and what the penalties would be as well as questions around enforcement and obligations for implementing mitigation measures. There was additional discussion about quantity of fuels at Superfund sites, impact to water facilities and the level of communications with other states with similar rules. Vice-Chair Baraso noted the swift action staff took to develop the proposed rules.

**Action:** DEQ recommends the EQC adopt the rules and amendments proposed in this Fuel Tank Seismic Stability report as part of Chapter 340 of the Oregon Administrative Rules

**Move:** Commissioner Schlusser

**Second:** Commissioner Kile

*The commission approved the action unanimously.*

### **Break**

The commission took a short break at approximately 10:55 a.m.

### **Item D: Recycling Modernization Act Implementation and Materials Management (Informational)**

At approximately 11:10 a.m., Abby Boudouris, acting DEQ Land Quality Administrator, introduced staff and the informational item on Recycling Modernization Act Implementation and Materials Management. The commission heard an overview of what was involved in getting to this phase and the associated rulemaking processes underway to implement the legislation. Staff briefed the commission on a proposed rulemaking DEQ will present to the commission in November for action. Staff outlined the goal to create an improved system for responsibly managing packaging, printed paper and food serviceware. Staff shared the status of the rulemaking process and other key issues, including details on the extensive public engagement process.

Commissioners asked clarifying questions. Chair George asked about the recyclability of plastics used in drug packaging and the list of covered products, as well as local and rural recycling access for various products. Vice-Chair Baraso asked about PRO obligations and coordination, as well as the uniform statewide and local government collection lists. David Allaway, DEQ Senior Policy Analyst in Materials Management, provided historical information to address current proposals. He addressed questions about locations of programs and solid waste disposal sites, requirements, accessibility of all materials for all people and residential services and other questions of the commission.

Commissioner Kile expressed interest in the timeline. Vice-Chair Baraso's inquiries related to designing and managing the system and what other states are taking a producer-centered approach. Chair George commented on the life-changing possibilities if this is adopted. She also inquired about recycling of glass. The commission recessed at 12:08 p.m. for a working lunch and executive session.

### **Discussion regarding schedule**

The commission returned to the meeting room at 1:15 p.m. and discussed a developing situation that may pose a threat to the commissioners, staff and attendees. Having decided to change venues and postpone the remainder of the meeting to the following day, Chair George adjourned the meeting for the day at approximately 1:30 p.m. DEQ notified the public through a GovDelivery bulletin about the need to shift the remaining agenda items to the following morning for virtual-only participation. The agenda was updated and posted online. The commissioners, presenters, staff and a member of the public packed up and left the building.

### **Adjourned**

Chair George adjourned the meeting at approximate 1:30 p.m.

### **Friday, Sept. 15, 9 a.m. to 12:30 p.m.**

Present: Chair Kathleen George, Vice-Chair Sam Baraso, Commissioners Molly Kile and Amy Schlusser.

The meeting was held by Zoom only.

Vice-Chair Baraso reconvened the meeting at 9 a.m. He shared the commission's apologies for abruptly adjourning early yesterday and shifting the agenda. At approximately 9:15 a.m., Vice-Chair Baraso announced Chair George has joined the meeting.

**Item E: 2024 Integrated Report Assessment Methodology (Informational)**

Director Feldon introduced Jennifer Wigal, DEQ Water Quality Administrator, who briefed the commission on the progress of the 2024 Oregon Water Quality Integrated Report and public comments received. Additional presenters were Connie Dou, DEQ Water Quality Standards, Source Water Protection and Assessment Manager, and Lesley Merrick, DEQ Water Quality Assessment Program Lead. They informed the commission of DEQ’s plans to assess the water quality data submitted and draft a 2024 impaired waters list (303(d)) list and status report for Oregon waters to release for public comment in early 2024. They also informed the commission of DEQ’s plans to submit its final assessment to EPA in April 2024 for approval.

Connie shared specific details about the process and next steps beginning with a look at the Clean Water Act framework and requirements. Leslie provided detailed information about the assessment methodology and criteria. The commission asked clarifying questions. Director Feldon noted that this meeting is one of the public engagement opportunities for the Integrated Report assessment methodologies. Chair George thanked the team and noted the significant of work and analysis it requires.

**Item F: Public Forum**

At approximately 9:30 a.m., the commission held a virtual public comment opportunity for any environmental and public health issues relevant to DEQ and EQC. Chair George clarified that the commission cannot accept comment on the following proposed rules because the public comment period recently closed:

- Upper Yaquina River Watershed TMDL
- Fish and Aquatic Life Use Updates 2022
- Powder River Basin TMDL
- Recycling Updates 2023

Members of the public who spoke during public forum are:

- Dale Feik, Intel air quality permit
- Alan Ismond, permits
- Rene Braga, Climate Protection Program
- Tim Miller, Director of Oregon Business for Climate, Climate Protection Program
- Pat Delaquil, Climate Protection Program
- Audrey Leo, CWA 401 permit
- Brad Reed
- Nataliya Pirumova, Families for Climate, restrict biomethane
- Brian Stewart, Climate Protection Program rules
- Johanthan Clark, Climate Protection Program
- Lori Steele, wastewater permit
- Nora Apter, Climate Protection Program
- Christine DeWitt, Seafood Processors
- Yelena Nowak, Seafood Processors
- Wike Westling, Families for Climate, Climate Protection Program
- Owen Wozniak, Climate Protection Program
- Greer Ryan, Clean Building Climate Solutions, Climate Protection Program

**Break**

The commission recessed for a short break. Chair George reconvened the meeting at approximately 10:45 a.m.

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Approved with amendments \_\_\_\_\_

Director Feldon addressed some of the comments from the public.

Director Feldon acknowledged this is the last meeting for Commissioners Greg Addington and Molly Kile. She said Commissioner Addington will be remembered for asking tough questions and being a voice for balance and reason and wishes him the best at the Farm Bureau. Commissioner Kile was appointed to the commission in 2017 and is completing her second and final terms. Director Feldon thanked her for providing invaluable science perspectives. Expressions of gratitude and appreciation for Commissioners Addington and Kile for approximately 20 minutes.

#### **Item G: Upper Yaquina River Watershed TMDLs (Action)**

Jennifer Wigal, DEQ Water Quality Division Administrator, introduced Steve Mrazik, DEQ's new Watershed Management Manager, and Alex Liverman, DEQ Watershed Management Program Analyst, who presented the proposed Upper Yaquina River Watershed Total Maximum Daily Load for bacteria and dissolved oxygen, by rule. Steve reported this is DEQ's first proposal for adoption of TMDLs by rule since EQC adopted amendments in February 2022, allowing both issuance of TMDLs by DEQ order and adoption of TMDLs by EQC, as rules.

Members of the commission requested an annual report on the progress of implementation plans called for in TMDLs submitted to DEQ for action. Vice-Chair Baraso acknowledged DEQ staff for all the work they've done to get here and develop a better understanding with agencies. He said given this is the first TMDL action by rule, he wants to dive into how this develops and therefore, formally requests annual updates. Chair George added the updates should be simple and direct, relying on existing elements DEQ already uses to track progress. She said she'd like DEQ to share milestones on a regular basis through informal check-ins. Commissioner Schlusser also said she'd liked regular check-ins on implementation and to address challenges that arise along the way. She said she is comfortable with moving the rules forward as is, but with assurance DEQ will provide those updates moving forward. Chair George noted the check-ins would help future commissioners too.

Director Feldon reiterates DEQ doesn't want to attach anything to this rule, but it's noted in this meeting the request that we institute this system to report back on a regular basis. Chair George reconfirmed the need for regular check-ins on this.

At 11:56 a.m., Chair George announced the follow two motions.

**Action:** DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340, Division 42 of the Oregon Administrative Rules and to incorporate, by reference, the Upper Yaquina Total Maximum Daily Loads (Attachment B) and Water Quality Maintenance Plan (Attachment C) for bacteria and dissolved oxygen.

**Move:** Commissioner Kile

**Second:** Commissioner Schlusser

*The Commission approved the action unanimously.*

**Action:** DEQ will present an annual report to the commission in a public meeting on the progress of the implementation of the Upper Yaquina River Watershed Total Maximum Daily Load for, by rule for bacteria and dissolved oxygen.

**Move:** Vice-Chair Baraso

**Second:** Commissioner Kile

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Approved as presented  \_\_\_\_\_  
Approved with amendments \_\_\_\_\_

*The Commission approved the action unanimously.*

**Item H: Climate 2023 Rulemaking Overview (Informational)**

Colin McConnaha, DEQ Office of Greenhouse Gas Programs Manager, and Nicole Singh who leads DEQ's Climate Protection Program and Greenhouse Gas Reporting Program, updated the EQC on key proposed changes to three related programs in the Office of GHG Programs: the GHG Reporting Program, Third Party Verification, and the Climate Protection Program. They provided information about the Climate 2023 rulemaking and DEQ's proposals for a series of clarifications and modifications to improve emissions reporting and program implementation. They provided an overview for the commission about how the GHG reporting program works and about the mandatory limits on GHG emissions from fossil fuel. They introduced strategies of emissions reductions in Oregon to meet 2035 and 2050 reduction targets. They informed the commission that DEQ's proposed rulemaking will be presented at the November EQC meeting. Commissioner Schlusser revisited a discussion on biomethane and "book and claim." She noted that during the public forum, many people raised concerns over allowing biomethane from out of Oregon.

**Adjourn meeting**

Chair George adjourned the meeting at approximately 12:30 p.m.