



# Notes: Oregon Environmental Quality Commission

## 433<sup>rd</sup> Regular Meeting, Sept. 26-27, 2024

**Thursday, Sept. 26, 2024**

### Welcome and Meeting Open

At 9:03 a.m., Chair Matt Donegan opened the meeting and reviewed DEQ's mission and the day's agenda.

Attendees: Chair Matt Donegan, Commissioner Karen Moynahan, Commissioner Amy Schlusser and Commissioner Mark Webb. Also present were DEQ Director Leah Feldon and Department of Justice Counsel Gary Vrooman.

The meeting was held via Zoom and in person at the DEQ Portland Headquarters (700 NE Multnomah Street, Portland, Oregon 97232) in the 3<sup>rd</sup> Floor Conference Room.

### Item A: Draft Meeting Minutes (Action)

Commissioners reviewed and took action on the proposed draft minutes from the May 2024 regular meeting, the July 2024 special meeting and the August 2024 special meeting.

**Action:** Approve minutes as presented of the May 2024 regular meeting, the July 2024 special meeting and the August 2024 special meeting.

**Move:** Commissioner Amy Schlusser

**Second:** Commissioner Karen Moynahan

*The commission approved the motion unanimously.*

### Item B: Bio-Oregon Protein, Inc. Hearing (Action)

*Presenters: Erin Saylor (DEQ), Diane Lloyd (DOJ), Misha Isaak (Attorney for Bio-Oregon Protein, Inc.)*

The commission heard oral argument from and had an opportunity to ask questions of both DEQ and Bio-Oregon representatives regarding Bio-Oregon's Petition for the commission's review of the Administrative Law Judge's October 2023 Proposed Order regarding a National Pollutant Discharge Elimination System permit issued by DEQ to Bio-Oregon for its seafood processing facility in Warrenton, Oregon.

Commissioners asked clarifying questions regarding the permittee's interpretation of DEQ's rules and processes. Commissioners asked about the availability of technology to meet DEQ's compliance requirements. There was also discussion about if and when there was an opportunity to object to changing Administrative Law Judges. The commission then deliberated and determined by motion its decision on the Final Order in this matter.

**Action:** Uphold the Administrative Law Judge's Proposed Order supporting the Permit, with the exception of the mercury limits for Outfall 002 and 003 which DEQ has conceded and adopt it as

#### Translation or other formats

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800-452-4011 | TTY: 711 | [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov)



the Final Order of the commission.

**Move:** Commissioner Amy Schlusser

**Second:** Commissioner Karen Moynahan

*The commission approved the motion unanimously.*

## **Break**

At approximately 10:45 a.m., the commission took a short break. Chair Donegan reconvened the meeting at 10:51 a.m.

## **Item C: Safety-Kleen Systems, Inc. Hearing (Action)**

*Presenters: Jeff Backman (DEQ), Gary Vrooman (DOJ), Jennifer Gates (Attorney for Safety-Kleen Systems, Inc.)*

The commission heard oral argument from and asked questions of both DEQ and Safety-Kleen representatives regarding DEQ's Petition for the commission's review of the Administrative Law Judge's July 2022 Proposed Order regarding alleged violations of federal financial assurance requirements adopted by reference by the EQC, as applied to Safety-Kleen's hazardous waste treatment, storage and disposal facility in Clackamas, Oregon. Commissioner Moynahan recused herself due to prior discussions on the matter.

During deliberations, Chair Donegan clarified that the action before the commission was to interpret the rule and that the commission can revisit this and have the hazardous waste program staff and DOJ review and further clarify the rules. The commissioners discussed the confusion around the interpretation of regulations in this case. The commission voted to modify the proposed order by revising the motion language to align with item number one on page four of the staff report and reduced violations to zero. The commissioners reconfirmed that moving forward, if they modify a proposed order in any substantial manner, they must explain the modification to the parties after which counsel would be directed to draft a new order to ensure that a standard is met.

**Action:** Direct counsel to draft a Final Order of the commission consistent with DEQ's recommended interpretation of 40 CFR section 264.147A.

**Move:** Commissioner Amy Schlusser

**Second:** Commissioner Mark Webb

**Action:** Adopt a Final Order reducing the number of violations in this case to zero.

**Move:** Commissioner Amy Schlusser

**Second:** Commissioner Mark Webb

*The commission approved both motions unanimously.*

## **Working Lunch and Executive Session**

At 12:23 p.m., the commission recessed for lunch and executive session. Chair Donegan reconvened the meeting at approximately 1:15 p.m.

## **Item D: Recycling Updates 2024 Rulemaking (Informational)**

*Presenters: Abby Boudouris (Acting as Land Quality Administrator), Cheryl Grabham, Nicole Portley,*

*Arianne Sperry*

DEQ staff presented background information on the Recycling Modernization Act rulemaking and topics. This is the second of two rulemakings the program is conducting to implement the requirements of the Act that was passed by the Oregon legislature in 2021 (Senate Bill 582). DEQ staff will present the proposed draft rules to the commission for consideration in November 2024.

The presentation covered potential impacts of the proposed Recycling Modernization Act rule. DEQ staff also provided information to the commission on the projected financial impact of fees on processors and consumers and explained that consumer costs may not increase significantly, and organizations are working on budget estimates. There was a discussion of the agency anticipating an annual budget of about \$200 million, which is a fraction of Oregon's total waste management cost. The presentation also outlined expected ecological fees, and their adjustments based on producers' efforts to reduce environmental impact. The commissioners noted that implementing the program is a significant effort and they are proud of the national interest in similar models in other states.

### **Item E: Climate Protection Program 2024 Rulemaking (Informational)**

*Presenters: Colin McConnaha, Matthew Steel, Whitney Dorer*

DEQ provided an update on the Climate Protection Program 2024 Rulemaking to reinstate a program establishing enforceable limits on climate pollution from the use of fossil fuels throughout Oregon. This rulemaking was prompted by a determination by the Oregon Court of Appeals that invalidated the Climate Protection Program rules that EQC adopted in late 2021. Commissioners asked clarifying questions and expressed concerns about pollution, public health, and environmental justice, urging that vulnerable communities be prioritized in climate action efforts.

### **Break**

At approximately 3 p.m., the commission took a short break and ended the Zoom session. Chair Donegan reconvened the meeting in a new Zoom session at approximately 3:15 p.m.

### **Item F: Public Hearing on Proposed Climate Protection Program 2024 Rulemaking**

The commission held an opportunity for the public to comment on the Climate Protection Program 2024 Rulemaking, which aims to limit greenhouse gas emissions and promote a transition to a clean energy future.

<b>Name</b>
1. Representative Pam Marsh
2. Senator Winsvey Campas
3. Councilor Adam Khosroabadi
4. Nate McCoy
5. Tom Kelly
6. Tim Miller
7. Andy Laurilo
8. Eliza Walton
9. Jan Mason
10. Jennifer Krauel

11. Santiago Nolasco Galicia
12. Representative Paul Evans
13. Dylan Plummer
14. Karen Harrington
15. Brian Stewart
16. Rachel Simplot
17. Jan Zuckerman
18. Athena Petty
19. Greer Klepacki
20. Kaleb Lay
21. Wesley Allen
22. Nora Apter
23. Harlan Shober
24. Brad Reed
25. Annabelle Rousseau
26. Sahalee McFarland
27. Max Hanley
28. Ruben Lancaster
29. Jay Ward
30. Samantha Hernandez
31. Rob Foster
32. Senator Aaron Woods
33. Philip Barnhart
34. Pat DeLaquil
35. Lisa Arkin
36. Meredith Connolly
37. Raevyn Thompson
38. Laura Iwanaga
39. Alan Journet
40. Brent Baglien
41. Zach Mulholland
42. Miranda Miller
43. Ethan Scarl
44. Sophie Els
45. Trevor Beltz
46. Sharla Moffett
47. Donny Neel
48. Jeremy Price
49. Dineen O'Rourke
50. David Reid
51. Jessica McBride

52. Nick Staub
53. Katie Schneer
54. Brad Archuleta
55. Lauren Kuenzi
56. Angus Duncan
57. Leon Araiza
58. Mark Darienzo
59. Peter Fargo
60. Tova Woyciechowicz
61. Joel Iboa
62. Maria Sipin
63. Nora Harren
64. Jacob Barlow
65. Evann Goss-Lemelle
66. Diane Meisenhelter
67. Ira Cuello-Martinez
68. Mikayla May
69. Chuck Wiese
70. Mary Moerlins
71. Paul Vogel
72. Jess Grady-Benson

## **Adjourn Meeting**

Chair Donegan adjourned the meeting at approximately 5:45 p.m.

## **Friday, Sept. 27, 2024**

### **Welcome and Meeting Open**

At approximately 9 a.m., Chair Matt Donegan opened the meeting and reviewed DEQ’s mission and the day’s agenda.

Attendees: Chair Matt Donegan, Commissioner Karen Moynahan, Commissioner Amy Schlusser, and Commissioner Mark Webb. Also present were DEQ Director Leah Feldon and Department of Justice Counsel Gary Vrooman.

The meeting was held via Zoom and in person at the DEQ Portland Headquarters (700 NE Multnomah Street, Portland, Oregon 97232) in the 3<sup>rd</sup> Floor Conference Room.

### **Item G: Climate Protection Program 2024 Rulemaking, Continued (Informational)**

This item was a continuation of Item E on the Sept. 26 agenda when the commission discussed the Climate Protection Program 2024 Rulemaking. Commissioners expressed a sense of urgency to be well-informed and prepared for the rulemaking vote in November. Commissioners commented on the Sept. 26

public hearing and noted that there was significant public support for the program as well as criticisms. Commissioners expressed support for the proposed program in general, highlighting Oregon's leadership in the area, although some said there are specific issues requiring further discussion, such as fee allocations and equity implications. Commissioners also expressed interest in ensuring that funding from Community Climate Investments is effectively managed and spent according to established guidelines while benefiting environmental justice communities.

Staff confirmed that an equity advisory council will be established to guide decisions related to greenhouse gas reduction measures that benefit diverse communities in Oregon.

There were also discussions about how funds could be allocated towards industrial decarbonization projects alongside traditional community-based initiatives like weatherization or transportation electrification. There was a focus on regulatory certainty for businesses involved in emissions reductions while maintaining accountability for achieving stated goals within the CCI program. Commissioners and staff acknowledged potential challenges surrounding the attribution of emissions reductions when multiple funding sources are involved, highlighting ongoing efforts to develop best practices around this issue. Commissioners emphasized the need to follow best practices in carbon counting and verification to build a credible program.

## **Item H: Wastewater Operator Certification 2024 Rulemaking (Informational)**

*Presenters: Tiffany Yelton-Bram, Kimi Grzyb*

DEQ staff presented information on an ongoing rulemaking to update Wastewater Operator Certification requirements. The rulemaking seeks to clarify existing rules and address the growing challenge of ensuring there is a sustainable, certifiable workforce to operate and maintain Oregon's wastewater utilities. DEQ intends to propose rules to the commission for consideration at their November 2024 meeting.

Commissioners asked clarifying questions that covered workforce development in the water treatment sector, highlighting the need for better training and certification pathways for operators, especially in smaller communities. DEQ staff presented information on the composition of the Rules Advisory Committee and their efforts to ensure representation from various regions and community sizes. Discussions with the commissioners and staff touched on educational programs available at community colleges that prepare individuals for certifications, as well as apprenticeship opportunities. There was an emphasis on adapting training to meet the specific needs of rural areas while addressing challenges related to employee recruitment and retention in wastewater management.

## **Break**

At approximately 10:35 a.m., the commission took a short break. Chair Donegan reconvened the meeting at approximately 10:50 a.m.

## **Item I: Total Dissolved Gas Modification Order for the Mainstem Columbia River (Informational)**

*Presenters: Steve Mrazik (DEQ), David Gruen (DEQ), Tucker Jones (ODFW), Jim McKenna*

*(Governor’s Office)*

DEQ, ODFW and the Governor’s Office provided an overview of total dissolved gas management on the Columbia River and the benefits and relative risks that voluntary spill for fish passage and the associated elevated TDG levels have on salmonids and other resident aquatic species. Oregon’s current TDG Modification Order expired on Aug. 31, 2024. The U.S. Army Corps of Engineers requested DEQ renew its TDG modification to allow for the anticipated operations to proceed in the upcoming 2025 fish passage spill season. This informational item provided background in advance of an action item planned for November 2024. The presentation included additional related information regarding agreements Oregon, Washington, the Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs Indian Reservation of Oregon recently entered into with the United States government.

Commissioners asked clarifying questions about the effect of increasing water temperatures and the interplay with elevation. Staff noted Oregon does provide a TDG permit for lower Columbia River dams and explained some of the unique and complex issues involved. Staff discussed how temperature in all water flow will be considered as we evaluate what might be best for salmon. A commissioner also asked clarifying questions as to potential seasonal variation in the risk for gas bubble trauma. Staff noted that spill in the fall is significantly less than it is in spring and summer and provided more explanation focused on the last modification order passed in 2020. Staff confirmed that DEQ has set certain criteria for the amount of TDG which is deemed an appropriate balance for risk of impairment. During the discussion, staff confirmed the purpose of the rulemaking.

**Lunch Break**

At approximately 11:50 a.m., the commission took a break for lunch. Chair Donegan reconvened the meeting at approximately 1 p.m.

**Item J: Public Forum**

The commission held a comment opportunity for any environmental and public health issues relevant to DEQ and EQC. Sign-ups to comment occurred shortly before the start of this agenda item, and people were asked to limit comments to three minutes or less. The commission could not accept comment on the following proposed rules:

- Aquatic Life Toxics Criteria
- Medium Heavy-Duty ZEV Rebate 2024
- Recycling Updates 2024
- Willamette River Mainstem and Major Tributaries TMDL

Name	Affiliation (if stated)	Topic
1. Dale Feik	WCCAN	Data Center
2. Dan Serres	Columbia Riverkeeper	NEXT
3. Janet Ault	Zen Community of Oregon	NEXT
4. Nancy Conover	Zen Community of Oregon	NEXT
5. Dr. Theodora Tsongas		NEXT
6. Brian Nicholas	Marion County	Three Basin Rule
7. Cathy Sampson-Kruse	Walla Walla Tribal Member	NEXT

8. Mike Feeley (Zoom)		NEXT
9. Audrey Leonard (Zoom)	Columbia Riverkeeper	NEXT
10. Diane Meisenhelter (Zoom)	XRPDX	NEXT
11. Mary Duvall (Zoom)	Clatskanie Resident	NEXT
12. Diana Gordan (Zoom)		NEXT
13. Sandy Moilanen (Zoom)	Clatskanie Resident	NEXT
14. Brandon Schilling (Zoom)	Clatskanie Resident	NEXT

Chair Donegan ended the public forum at approximately 2 p.m.

### **Item K: Aquatic Life Toxics Criteria Rulemaking (Action)**

*Presenters: Connie Dou, James McConaghie*

DEQ staff presented proposed rules to update Oregon’s water quality criteria for toxic chemicals to protect aquatic life. DEQ’s last comprehensive update to these criteria was in 2004. Since then, EPA has published several new or updated criteria recommendations. DEQ proposed to adopt new aquatic life criteria for six toxic chemicals into OAR-340-041-8033 Table 30: acrolein, aluminum, cadmium, carbaryl, diazinon and tributyltin. In addition, DEQ proposed to remove Table 31: “Aquatic Life Water Quality Guidance Values for Toxic Pollutants” from OAR-340-041-8033 for clarity because the values are outdated and are not regulatory criteria.

Commissioners asked clarifying questions about the application of aquatic herbicides and pesticides which led to a discussion around DEQ’s pesticide stewardship program in coordination with the Oregon Department of Agriculture, as well as other agencies who play a role.

**Action:** Adopt the proposed rules, as shown in Attachment A, to amend Chapter 340, Division 41, Rule 8033, Table 30 and Table 31 of the Oregon Administrative Rules.

**Move:** Commissioner Mark Webb

**Second:** Commissioner Karen Moynahan

*The commission approved the motion unanimously.*

### **Break**

At approximately 3 p.m., the commission took a short break. Chair Donegan reconvened the meeting at 3:15 p.m.

### **Item L: Medium Heavy-Duty ZEV Rebate 2024 (Action)**

*Presenters: Ali Mirzakhali, Gerik Kransky, Rachel Sakata*

DEQ staff presented proposed rules to establish the Medium and Heavy-Duty Vehicle Rebate Program and make updates to the low- and moderate-income rebates for the Oregon Clean Vehicle Rebate Program. The proposed rules are based on direction from the 2023 and 2024 legislative sessions. The proposed MHD rebate program sets rebate levels, outlines application process and requirements for MHD purchasers and dealers, determines DEQ application review process, and creates clear conditions for



award of rebates and purchaser requirements. The proposed updates to OCVRP include establishing a stand-alone Charge Ahead fund for low- and moderate-income households.

Commissioners asked clarifying questions about how California set its rebate amounts, how the rule would advance racial equity, why Oregon and California need consistent standards and what the EV availability is for each of the vehicle classes.

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

**Move:** Commissioner Karen Moynahan

**Second:** Commissioner Amy Schlusser

*The commission approved the motion unanimously.*

### **Item M: Director’s Report (Informational)**

Director Leah Feldon presented written and verbal updates on current and future agency activities and other issues of interest to the commission, including the introduction of Laura Fredrickson, DEQ’s new Eastern Region Administrator. DEQ leadership team members presented additional background and details on several items.

### **Adjourn Meeting**

Chair Donegan adjourned the meeting at approximately 4:30 p.m.

### **Other Resources**

- [Thursday, Sept. 26 Zoom recording #1](#) – passcode: 0?r8^3Pu
- [Thursday, Sept. 26 Zoom recording #2](#) – passcode: 3\$BM^tqB
- [Friday, Sept. 27 Zoom recording](#) – passcode: Nf#=L2Lm
- [September 2024 EQC webpage](#)

### **Non-discrimination statement**

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