



Notes: Oregon Environmental Quality Commission

434th Regular Meeting, Nov. 21-22, 2024

Thursday, Nov. 21, 2024

Welcome and Meeting Open

At 9:07 a.m., Chair Matt Donegan opened the meeting and reviewed 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 laboratory (7202 NE Evergreen Parkway, Suite 150, Hillsboro, OR 97124) in the PHL conference room.

Item A: Draft Meeting Minutes (Action)

Commissioners reviewed and took action on the proposed draft minutes from the September 2024 regular meeting and the October 2024 special meeting.

Action: Approve minutes as presented of the September 2024 regular meeting and the October 2024 special meeting.

Move: Commissioner Mark Webb

Second: Commissioner Karen Moynahan

The commission approved the motion unanimously. Chair Matt Donegan, Commissioner Karen Moynahan, Commissioner Amy Schlusser and Commissioner Mark Webb in favor.

Item B: Marion County's Petition to Amend the Three Basin Rule (Action)

Presenters: Aron Borok, Mary Camarata, Connie Dou, Jennifer Wigal

DEQ Water Quality Administrator Jennifer Wigal introduced the item to the commission. DEQ staff presented a recommendation for commission action in response to Marion County's rulemaking petition, amending Oregon's "Three Basin Rule" to allow a new wastewater treatment plant discharging to groundwater near the North Santiam River. Commissioners Moynahan, Webb and Schlusser asked clarifying questions about the foundational action presented, any of the comments opposed to the petition, and potential implications on other basins. Director Leah Feldon provided information about the timing of the rule.

Action: Move that the Environmental Quality Commission direct DEQ to initiate rulemaking proceedings to revise the Three Basin Rule to allow NPDES permits under limited circumstance consistent with the stated objectives of the rule.

Move: Commissioner Mark Webb

Second: Commissioner Karen Moynahan

Translation or other formats

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The commission approved the motion unanimously. Chair Matt Donegan, Commissioner Karen Moynahan, Commissioner Amy Schlusser and Commissioner Mark Webb in favor.

Item C: Clean Fuels Program Updates Rulemaking (Informational)

Presenters: Colin McConnaha, Bill Peters

At 9:49 a.m., Manager of DEQ Greenhouse Gas Programs Colin McConnaha introduced the item to the commission. DEQ staff, Bill Peters, presented a preview of a proposed rulemaking to update Clean Fuels Program rules, which are expected to come to the commission for action in January 2025. The proposed changes are technical and focused on the methods and data sources used by the program to determine the carbon intensity values of transportation fuels used throughout Oregon. Chair Donegan and Commissioners Moynahan, Schlusser and Webb asked clarifying questions, including about calculations and costs for third-party verifications. Director Feldon provided additional clarification regarding carbon sequestration.

Break

At approximately 10:30 a.m., the commission took a short break. Chair Donegan reconvened the meeting at 10:47a.m.

Item D: Climate Protection Program 2024 Rulemaking (Action)

Presenters: Colin McConnaha, Nicole Singh

Director Feldon introduced the item and provided commissioners with the background of the rulemaking and a broad overview of DEQ's process that reflects significant input from the public and stakeholders and regulated community. DEQ staff presented proposed rules to establish the Climate Protection Program. This is a rulemaking to reinstate a program establishing limits on climate pollution from the use of fossil fuels throughout Oregon. The 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.

DEQ Senior Climate Policy Advisor Nicole Singh provided information on the takeaways from previous proposed rulemaking in 2022 and 2023, how DEQ chose to move forward, make improvements and ensure the overall structure of the program puts DEQ on the right path. Commissioner Schlusser asked clarifying questions about the compliance instruments. Chair Donegan asked clarifying questions and Commissioner Moynahan voiced concerns. Chair Donegan commented on policy options. Director Feldon provided information about the overall goal in the rulemaking language and the commitment to transparency and to establishing ongoing conversations with the commission about the program. Singh presented information to the commission about the Community Climate Investment program, which is part of the Climate Protection Program and is an area where DEQ gets a lot of attention, comments and engagement. Commissioner Webb voiced appreciation for the changes made and hopes the conversations continue. He also provided specific feedback on the elements of the proposed program. Commissioner Moynahan concurred and elaborated. Commissioner Schlusser provided her observations on the proposed rule and provided prepared comments on the program.

Action: Move that the Environmental Quality Commission adopt the proposed rules and rule amendments in Attachments A1 and A2, as amended by Exhibit 1 to Attachment A1, as part of

chapter 340 of the Oregon Administrative Rules.

Move: Commissioner Karen Moynahan

Second: Commissioner Amy Schlusser

The commission approved the motion unanimously. Chair Matt Donegan, Commissioner Karen Moynahan, Commissioner Amy Schlusser and Commissioner Mark Webb in favor.

Before the vote, Chair Donegan voiced his support of the program and specific reflections. Director Feldon added that the rulemaking has been a meaningful process and thousands of hours of work. She and the commissioners praised DEQ teams in various programs, Department of Justice staff, and Governor Tina Kotek’s staff. Feldon thanked the commissioners for their engagement with the process, thoughtful comments, questions and conclusions.

Working Lunch and Executive Session

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

Item E: 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 two minutes or less. The commission could not accept comment on the following proposed rules:

- 2024 Total Dissolved Gas Modification Order for the Mainstem Columbia River
- E-Cycles 2024
- Recycling Updates 2024 Rulemaking
- Vehicle Inspection Program Updates 2024
- Wastewater Operator Certificate 2024 Rulemaking
- Willamette River Mainstem and Major Tributaries TMDL

Name	Affiliation (if stated)	Topic
1. Shelly Boshart Davis	State Representative	Low-NOx/ACT
2. Brett Morgan	Climate Solutions	Low-NOx/ACT
3. Nakisha Nathan	Neighbors for Clean Air	Low-NOx/ACT
4. Tim Miller	Oregon Business for Climate	Low-NOx/ACT
5. Sharla Moffett	Oregon Business and Industry	Low-NOx/ACT
6. Craig Campbell	Oregon Refuse and Recycling Association	Low-NOx/ACT
7. Kevin Downing		Low-NOx/ACT
8. Joshua Lovelace	Miller Industries	Low-NOx/ACT
9. Dan Serres	Columbia Riverkeeper	401 certification process
10. Carrie Nyssen	American Lung Association	Low-NOx/ACT
11. Jason Fields	Fleet Sales West	Low-NOx/ACT
12. James Walsh	Fleet Sales West	Low-NOx/ACT
13. David Reid	Astoria Chamber of Commerce	Low-NOx/ACT

14. Mia Goros	Climate Reality Project Portland	Low-NOx/ACT
15. Will	Clatskanie Resident	NEXT
16. Sam Wilson	Union of Concerned Scientists	Low-NOx/ACT
17. Guillermo Ortiz	Natural Resources Defense Council	Low-NOx/ACT
18. Leah Missik	Climate Solutions, Washington State	Low-NOx/ACT
19. Julia Happ-Shine	Columbia County Resident	NEXT
20. Tracy McGregor		NEXT
21. Xitali Torres	Verde	Low-NOx/ACT
22. Ramsey Lueder		NEXT
23. Jaimini Parekh	Earth Justice	Low-NOx/ACT
24. Jan Chozen Bays	Biologist and Pediatrician	NEXT
25. Lauren Kuenzi	Oregon Farm Bureau	Low-NOx/ACT
26. William Turnipseed		NEXT
27. Francesca		Low-NOx/ACT
28. Rachel Tusler	Clatskanie Resident	NEXT
29. Yassi K.	Sierra Club	Low-NOx/ACT
30. Skip Stanaway	Tualatin Distribution Company Owner, Tualatin Chamber of Commerce	Low-NOx/ACT
31. Maureen Milton	Clatskanie Resident	NEXT
32. Dana	Salem Resident	Low-NOx/ACT
33. Matthew Hepner	CEWW, IBEW	Low-NOx/ACT
34. Lynn Handlin	Small Business Owner, Extension Rebellion PDX	Low-NOx/ACT, NEXT
35. Eliza Walton	Oregon League of Conservation Voters	Low-NOx/ACT

Chair Donegan ended the public forum at approximately 2:30 p.m.

Item F: 2024 Total Dissolved Gas Modification Order for the Mainstem Columbia River (Action)

Presenters: David Gruen, Steve Mrazik, Jennifer Wigal

At approximately 2:30 p.m., DEQ Water Quality Administrator Jennifer Wigal introduced the action item, DEQ’s proposed modification of the 2024 Total Dissolved Gas Modification Order for the mainstem Columbia River. Steve Mrazik, Water Quality Manager, provided a broad overview of the proposed modification. Commissioners were presented with background information on Oregon’s current TDG Modification Order which 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. David Gruen, Columbia River Coordinator, presented details about the public comment process and feedback.

Action: Move that the Environmental Quality Commission adopt the proposed order modifying the total dissolved gas water quality standard on the mainstem Columbia River as included in Attachment F.

Move: Commissioner Mark Webb

Second: Commissioner Amy Schlusser

The commission approved the motion unanimously. Chair Matt Donegan, Commissioner Karen Moynahan, Commissioner Amy Schlusser and Commissioner Mark Webb in favor.

Break

At approximately 2:55 p.m., the commission took a short break. Chair Donegan reconvened the meeting at 3:12 p.m.

Item G: Temporary Rulemaking for the Clean Trucks Rules (Action)

Presenters: Eric Feeley, Rachel Sakata

Rachel Sakata, DEQ Transportation Strategy Section Manager, and Eric Feeley, DEQ Air Planner, presented information to the commission on DEQ's proposed temporary rules which are designed to pause the implementation of the Heavy-Duty Low-NOx Omnibus rules for one year. If the EQC adopts the proposed delay, the rule would go into effect with engine model year 2026. Staff explained that in addition to proposing to delay the Heavy-Duty Low-NOx Omnibus rule until 2026, DEQ is also incorporating other minor changes in order to include additional zero emission powertrain flexibilities that CARB built into the Heavy-Duty Low-NOx Omnibus rule that directly connect to the ACT rule and to eliminate trailer language that was overturned in a court challenge. Commissioners asked clarifying questions about strategies to retire diesel trucks, health impacts of diesel, and investments in and timeline for infrastructure projects.

Staff explained that by adopting the proposed temporary amendment, the commission would be providing additional options vehicle manufacturers can factor into their compliance approach for the ACT rule. Staff explained how the delay would give manufacturers more time and flexibility to make up any deficits accrued for a model year, especially in the face of supply chain issues or market conditions. For the Heavy-Duty Low-NOx Omnibus rule, delayed implementation would provide more time for engine manufacturers to bring CARB certified products to market. Delaying for another year also gives DEQ the ability to learn from the California implementation for model year 2024 and 2025.

Action: Move that the Environmental Quality Commission determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the parties concerned as provided under the Justification section of the DEQ staff report; and adopt TEMPORARY rules as proposed in Attachment A as part of Chapter 340, Division 257 and 261 of the Oregon Administrative Rules to be effective Jan. 1, 2025.

Move: Commissioner Mark Webb

Second: Commissioner Amy Schlusser

The commission approved the motion with a vote of 3-1. Chair Matt Donegan, Commissioner Amy Schlusser and Commissioner Mark Webb in favor. Commissioner Karen Moynahan opposed the motion.

Adjourn Meeting

Item H was postponed until Nov. 22, 2024. Chair Donegan adjourned the meeting at approximately 4:45 p.m.

Friday, Nov. 22, 2024

Welcome and Meeting Open

At 9:04 a.m., Chair Matt Donegan opened the meeting and reviewed the day's updated agenda. Director Leah Feldon provided the specific details about the Nov. 21, 2024, agenda modifications. Item H on the Vehicle Inspection Program Overview was postponed to Nov. 22, 2024, due to the additional time needed to deliberate on Item G, the Temporary Rulemaking for the Clean Trucks Rules. Director Feldon informed the audience that she will abbreviate Item M, the Director's Report, which is available on the meeting agenda webpage.

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 laboratory (7202 NE Evergreen Parkway, Suite 150, Hillsboro, OR 97124) in the PHL conference room.

Item I: Willamette River Mainstem and Major Tributaries TMDL (Informational)

Presenters: Brian Creutzburg, Steve Mrazik, Jennifer Wigal, Ryan Michie

DEQ Water Quality Administrator Jennifer Wigal introduced the item to the commission. DEQ water quality program staff presented information to the commission on the proposed Willamette River Mainstem and Major Tributaries temperature Total Maximum Daily Load, or TMDL, a project of the court ordered temperature TMDL replacements due to the Natural Conditions Criteria contained in Oregon's water quality standard for temperature. Staff informed the commission that they plan to present the proposed rule to the commission for adoption in January 2025. Brian Creutzburg, Tualatin Basin Coordinator, informed the commission of the implementation plans. Chair Donegan asked clarifying questions regarding how much discretion there is with reserve capacity and margin of safety. Commissioners Moynahan and Schlusser also asked clarifying questions.

Item J: E-Cycles 2024 (Informational)

Presenters: Cheryl Grabham, Rachel Harding, Michael Kucinski, Michael Lee

DEQ staff presented a preview of a rulemaking related to the Oregon E-Cycles program expected to come to the commission for consideration in January 2025. The Oregon Legislature adopted changes to the program in 2023, modernizing the longstanding electronics recycling program. This program prevents toxins from entering the environment through illegal dumping and diverts materials from Oregon landfills ensuring precious and rare earth metals can be recovered for new electronics. Commissioners asked clarifying questions.

Break

At approximately 10:35 a.m., the commission took a short break. Chair Donegan reconvened the meeting at 10:54 a.m.

Item K: Recycling Updates 2024 Rulemaking (Action)

Presenters: Cheryl Grabham, Michael Kucinski, Nicole Portley, Arianne Sperry

DEQ Interim Land Quality Administrator Mike Kucinski introduced the item and provided an overview

and context for the commissioners. He referred to the September 2024 presentation to the commission. DEQ staff presented proposed rules from the second Recycling Modernization Act rulemaking to the commission for consideration, the second of two rulemakings conducted by the program to implement the requirements of the Act that was passed by the Oregon legislature in 2021 (Senate Bill 582). Staff reviewed the topics addressed through this rulemaking, including obligations for local government, producer responsibility organizations and producers, standards for life cycle evaluation, PRO reporting, covered products, requirements for recycling processors, permitting and certification, and updates to existing Division 12 rules. Commissioners asked clarifying questions.

Action: Move that the Environmental Quality Commission adopt the proposed rule amendments in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

Move: Commissioner Mark Webb

Second: Commissioner Amy Schlusser

The commission approved the motion unanimously. Chair Matt Donegan, Commissioner Karen Moynahan, Commissioner Amy Schlusser and Commissioner Mark Webb in favor.

Lunch Break

At approximately 12:30 p.m., the commission took a break for lunch. Chair Donegan reconvened the meeting at approximately 1 p.m.

Item L: Wastewater Operator Certification 2024 Rulemaking (Action)

Presenters: Kimi Grzyb, Jennifer Wigal, Tiffany Yelton-Bram

DEQ Water Quality Administrator Jennifer Wigal introduced the item to the commission. DEQ staff presented proposed rules to update Wastewater Operator Certification requirements. Staff presented information to the commissioners about the rulemaking which 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. Commissioners asked clarifying questions.

Action: Move that the Environmental Quality Commission adopt the proposed rule amendments in Attachment A as part of chapter 340, division 049, of the Oregon Administrative Rules.

Move: Commissioner Mark Webb

Second: Commissioner Karen Moynahan

The commission approved the motion unanimously. Chair Matt Donegan, Commissioner Karen Moynahan, Commissioner Amy Schlusser and Commissioner Mark Webb in favor.

Item H: Vehicle Inspection Program Overview (Informational)

Presenters: Michael Orman, Wade Sadler

DEQ Air Quality Division Manager Michael Orman introduced the item to the commission. Wade Sadler, DEQ's Vehicle Inspection Program Manager, provided introductory information to the commission about the Vehicle Inspection Program, and provided a preview of a proposed rulemaking DEQ staff plan to present to the commission in January 2025. Sadler provided detailed information about the purpose of the rulemaking which would formalize remote on-board diagnostics testing through VIP's "DEQ Too program." DEQ Too partners with private businesses to provide additional emissions testing options to the motoring public.

Item M: Director's Report (Informational)

Director Leah Feldon presented a few highlights from her written report on current and future agency activities and other issues of interest to the commission. She reserved the time to acknowledge the death of Bob Sallinger, who spent decades with the Bird Alliance of Oregon, formerly known as the Audubon Society of Portland, and was most recently Executive Director of both the Willamette Riverkeepers and Bird Conservation Oregon.

Adjourn Public Meeting

Chair Donegan adjourned the public meeting at approximately 2:30 p.m.

Item N: DEQ Laboratory Tour

The commission received a private tour of DEQ's Laboratory and Environmental Assessment Division, or LEAD, which supports the agency's mission by providing timely, high-quality scientific information through water and air quality monitoring, laboratory services and data analysis.

Other Resources

- [Thursday, Nov. 21 Zoom recording](#) – passcode: B5r0y#6D
- [Friday, Nov. 22 Zoom recording](#) – passcode: ^95xiz&2
- [November 2024 EQC webpage](#)

Non-discrimination statement

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