



State of Oregon Department of Environmental Quality

Minutes of the Oregon Environmental Quality Commission meeting

405th regular meeting

Sept. 26 and 27, 2019

Madras

Multiple meeting locations: Please see below for details

Thursday, Sept. 26, 2019: 8:30 a.m. to 5 p.m.

A joint meeting with the Oregon Board of Agriculture

Meeting location: The Inn at Cross Keys Station: 66 NW Cedar Street (Madras)

Chair George convened the meeting at 8:30 a.m.

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

Meeting open and welcome

The chairs of the Board of Agriculture and Environmental Quality Commission opened the meeting with a welcome and overview of the day's joint meeting agenda. Meeting attendees introduced themselves and their roles.

Water quality roles and responsibilities

Director Whitman, DEQ, and Director Taylor, provided introductory remarks for this item and discussed the roles of the respective boards and agencies.

Staff from ODA and DEQ presented on the roles and responsibilities of their respective agencies to protect, maintain and enhance Oregon's water quality. The presenters included:

- Jennifer Wigal, DEQ Water Quality Division Deputy Administrator
- Gene Foster, DEQ Water Quality Division Watersheds Program Manager
- Stephanie Page, ODA Director of Natural Resources Program
- John Byers, ODA Agricultural Water Quality Program Manager

Topics for presentation and discussion included:

- Attaining and protecting beneficial uses so Oregon's waters are fishable, swimmable and drinkable

- Ensuring all entities are doing their parts to meet the collective water quality planning, monitoring, reporting and regulating delegated to DEQ through the Clean Water Act
- Update on Oregon's 2018 Integrated Report
- The roles of other entities, including state and federal agencies, as implementers of DEQ's regulations
- ODA's Agricultural Water Quality Management Plans, and how they provide the roadmap for agricultural entities to do their part to meet state water quality goals

Commissioners and board members asked clarifying and informational questions throughout the staff presentations. Directors Taylor and Whitman provided additional clarifications and context in addition to the staff information.

Pesticide Stewardship Partnership Program

Staff from DEQ and ODA presented an overview of the PSP, and evaluation of its successes since 2016, and next steps for a partnership in the Deschutes Basin.

Stephanie Page, ODA Director of Natural Resource Programs, introduced this item. Kirk Cook, ODA Pesticide Stewardship Specialist, discussed the program's background and the adaptive management processes used by the program to find ways to reduce pesticide uses in agricultural areas. Cook noted several program enhancements since 2016, including a formal Stakeholder Advisory Group to begin in November 2019.

Kevin Masterson, DEQ Toxics Reduction Specialist, discussed the work of DEQ for the program and the data collected to-date through the program for the 10 projects across the state. Sam Rossi, Jefferson Soil and Water Conservation District, discussed some of the local implementation of the program in the local area.

The board and commission members asked clarifying questions about the program, and pesticide-related work, throughout the item.

Following the staff presentation, Leah Feldon, DEQ Deputy Director, presented Kevin Masterson with an award to recognize his 25 years of service to DEQ. Director Whitman and Chair George presented additional comments thanking Masterson for his leadership at the agency, and nationally, on toxics reduction issues.

Lunch

Chair George recessed the commission for lunch from 11:30 a.m. to 12:30 p.m.

Deschutes Basin water management issues and tour

Presenters from a variety of state, local and Tribal agencies and entities co-presented on issues regarding water quality in the Deschutes Basin, in preparation for an afternoon tour of two facilities.

Presenters included:

- Eric Nigg, DEQ Eastern Region Water Quality Manager
- Bridget Moran, U.S. Fish and Wildlife
- Kyle Gorman, Water Resources Department
- Ron Nelson, Deschutes River Conservancy
- Mike Britton, North Unit Irrigation District
- Martin Richards, local farmer and North Unit Irrigation District Chair

The panelists presented about water issues in the Deschutes Basin, generally. Topics included:

- Water management in the Deschutes Basin to protect the Oregon spotted frog
- Steelhead, and other fish, reintroduction and protections in the basin
- Implications for irrigation, and water users on irrigation systems
- Temperature control and related water quality challenges, including Lake Billy Chinook

The board and commission adjourned its meeting at 1:30 p.m. Agency staff, board and commission members visited two sites as part of an afternoon tour.

- Site one: Pelton Round Butte Dam
- Site two: Symons Beef Company

Following the tour, commissioners and some DEQ staff attended dinner with Board of Agriculture members and staff from the Department of Agriculture. No business was discussed at the social dinner.

Friday, Sept. 27, 2019: 8:30 a.m. to 4:30 p.m.

Meeting location: Jefferson County Library, Rodriguez Annex: 134 SE E Street (Madras)

Chair George convened the meeting at 8:36 a.m.

- Present: Chair George, Vice-chair Baraso, Commissioner Kile, Commissioner Addington, Commissioner Mosby

A. Action: Minutes review and approval

Commissioners reviewed the draft meeting minutes from the July 18-19, 2019, EQC regular meeting.

Action: Approve the July 18-19, 2019, EQC meeting minutes as presented

Move: Commissioner Mosby

Second: Commissioner Addington

The commission unanimously approved the action

B. Action: Clean Vehicle Rebate Program temporary rules

Ali Mirzakhilili, Air Quality Division administrator, introduced the item and provided a brief update on program status. Rachel Sakata, Clean Vehicle specialist, presented the proposed temporary rules for

commission action. Sakata described the justification supporting the need for temporary rules and additional background related to the Oregon Clean Vehicle Rebate Program.

Action: Determine that failure to act promptly to adopt temporary rules would result in serious prejudice to the public interest and the interests of the parties concerned as provided under the Justification section of the staff report for this item; and adopt temporary rules as proposed in Attachment A of the staff report for this item as part of Chapter 340, Division 270 of the Oregon Administrative Rules, to be effective beginning Sept. 29, 2019.

Move: Vice-chair Baraso

Second: Commissioner Kile

The commission unanimously approved the action

C. Action: Water Quality Program fee rules

Jennifer Wigal, Water Quality Division Deputy Administrator, presented a proposal for a fee increase related to Water Quality program permits. She described the relevant permit fees, the justification for the proposed increases and other information about the permitting programs. Commissioners asked clarifying and informational questions about the proposal, including the advisory committee process and recommendations.

Action: Approve the proposed Water Quality fee increase rule amendments, as seen on pages 21 through 54 of the staff report for this item.

Move: Commissioner Mosby

Second: Vice-chair Baraso

The commission unanimously approved the action

D. Informational: Permit modification processes

Kieran O'Donnell, Office of Compliance and Enforcement manager, introduced the item and provided some background on the commission's request for this informational item. He noted his co-presenters were subject matter experts regarding permitting at the agency, and would individually present on air, land and water permitting actions.

Mark Bailey, Eastern Region Air Quality manager, presented the specifics and requirements for facilities seeking a change in their operations or permit modifications. Audrey O'Brien, Northwest Region Land Quality manager, described different requirements in the Land Quality Division programs. Renee Nomura, Western Region Water Quality manger, presented about the requirements and processes a facility must follow when it has changes to its operations, which may result in permit modifications or other actions by DEQ.

Commissioners asked clarifying and informational questions throughout the item. Director Whitman asked staff to provide scenario-based responses to a variety of situations for facility operations. Scott Smith, Emergency Response specialist, provided additional information by phone related to emergency response obligations and actions for facilities changing operations or processes.

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E. Public forum

The commission opened an opportunity for public comment, both in-person and by toll-free conference line at approximately 10:20 a.m. Each person presenting comment was asked to limit their comments to three minutes or less.

1. Ellen Saunders presented comment by phone concerning the spraying of herbicides and pesticides near her residence by forestland management practices. She asked the commission to take action to stop all spraying of aerial spraying on all forested lands.

2. Neil Baunsgard, The Environmental Center, presented comments by phone supporting the Oregon Clean Vehicle Rebate Program, including the temporary rules approved earlier today. He noted concerns regarding the definition of household in the rules as it pertains to people eligible for the Charge Ahead rebate.

3. Clair Klock presented comments regarding climate change policy discussions, and the need for mitigation and prevention, in addition to adaptation. He also presented comments asking the commission and agency staff to testify to the Legislature to support the Department of Agriculture's Strategic Implementation Areas program and work.

4. Liz Hamilton, Northwest Sportfishing Industry Association, presented comments by phone in support of a Total Dissolved Gas standard of 125 percent saturation, with additional specifics related to the standard under development.

5. Dale Feik, Hillsboro Air and Water, presented comments by phone regarding greenhouse gases and other concerns. He noted that he provided a copy of his comments via email.

6. Samantha Bayer, Oregon Farm Bureau, presented comments related to the joint meeting with the Board of Agriculture on Thursday, Sept. 26, 2019, and the Pesticide Stewardship Program and Agricultural Water Quality Management Program.

7. Mary Scurlock, Oregon Stream Protection Coalition, presented comments by phone thanking the commission and DEQ related to engagement with the Board and Department of Forestry for Forest Practices rules in the Rogue area.

8. David Warick, American Rivers, presented comment by phone in support of the Total Dissolved Gas standard revisions under development.

9. Natalie Danielson, Friends of Family Farmers, presented comments and concerns about the CAFO program in Oregon. Danielson provided a copy of the letter presented as testimony.

10. Miles Johnson, Columbia Riverkeeper, expressed concerns related to operations at the Port Westward oil terminal and support for the Total Dissolved Gas standard at 125 percent saturation for fish spill and survival.

Chair George closed the public comment period at approximately 11 a.m.

F. Informational: Total Dissolved Gas standard for the Columbia River

Gene Foster, DEQ Water Quality Watershed manager, introduced the item. Paula Calvert, DEQ Columbia River Coordinator, discussed background and general information about the Total Dissolved Gas standard, and the proposed changes to the standard for the 2020 and 2021 seasons. Director Whitman and the commissioners asked clarifying and informational questions throughout the item.

Dan Turner, U.S. Army Corps of Engineers, presented on the Corps' operational processes related to fish spill and managing total dissolved gas at its dams. Ed Bowles, U.S. Fish and Wildlife, presented detail on fish spill and the ways it can affect salmon and other fish migrating through dams. Bowles also discussed the Flexible Spill Agreement, signed in late 2018 by multiple signatories to develop a cooperative pathway to meeting the needs of fish and humans, including power generation at the dams.

Commissioners and Director Whitman asked clarifying and informational questions throughout the item.

G. Informational: Updates Willamette Basin Mercury TMDL

Gene Foster, Water Quality Watershed manager, introduced the item and reviewed the current status for the development of the Willamette Basin Mercury TMDL. Foster summarized the agency's outreach and engagement process, including hearings in Portland and Eugene, to solicit public comment on the proposed draft TMDL.

Foster discussed elements of the draft TMDL, including the assessment and monitoring framework to track improvements and various metrics for success. Commissioners and Director Whitman asked clarifying questions throughout the presentation.

Comment opportunity: Updates on Willamette Basin Mercury TMDL

Chair George opened a public comment opportunity specific to item G at approximately 12:30 p.m. People were able to present comment by phone or in-person at the meeting, and limit comments to three minutes or less. One person signed up to present comment in-person, and no people presented comment by phone.

1. Dale Feik, Hillsboro Air and Water, presented comment supporting the work of the DEQ staff and others. He noted his appreciation for the staff's work to explain the science of the TMDL.

Following the public comment, Chair George asked staff to return to present on the Upper Klamath and Lost River Temperature TMDL, which DEQ issued earlier this month. Jennifer Wigal, Water Quality Division Deputy Administrator introduced the item. Gene Foster, Water Quality Watershed Manager, summarized the status of the TMDL. He noted that DEQ expects EPA's approval of the TMDL within the submittal deadline of Sept. 30, 2019.

Foster presented on the changes made to the TMDL in response to public comment, and the final summary information of the TMDL. Director Whitman provided additional clarifying comments about the TMDL, and thanked the DEQ staff for their work to make significant changes in response to public comments and concerns.

Commissioners asked clarifying questions and offered their appreciation for the staff's work on the TMDL.

Working lunch and executive session

Chair George recessed the commission for a working lunch and executive session from 1 to 2:15 p.m. The commission met with Department of Justice staff and some DEQ staff as part of the executive session, pursuant to ORS 192.660(2)(h).

Chair George reconvened the meeting at 2:18 p.m.

H. Action: Contested case hearing, General Property Group

Gary Vrooman, the commission's legal counsel, provided an overview of the process for the commission's review. Vrooman polled the commission for ex parte contact, and none was reported. He summarized the facts of the contested case, the position of both parties in the matter and noted the commission's alternatives for action.

Souvanny Miller, representing General Property Group, presented the position of General Property Group by phone. Miller noted that two people affiliated with General Property Group were also present on the call. Miller asked the commission to dismiss the civil penalty as presented.

Kieran O'Donnell, Compliance and Enforcement Manager, and Susan Elworth, Environmental Law Specialist, presented DEQ's position and asked the commission to uphold the decision of the Administrative Law Judge, and related civil penalty, and issue a Final Order for this matter.

Each party had an opportunity for rebuttal. The commissioners asked clarifying and informational questions of both parties. Chair George summarized the commission's alternatives for action.

Action: Issue a final order adopting Administrative Law Judge Barber's Proposed and Final Order; and direct Director Whitman to issue the final order on behalf of the commission.

Move: Commissioner Kile

Second: Commissioner Mosby

Prior to commission vote, Commissioner Addington provided additional comments regarding his position.

The commission approved the action unanimously

I. Informational: Director's report

Director Whitman presented written and verbal updates on agency activities and other issues of interest to the commission. Commissioners asked informational questions about several items in the written report and verbal updates presented.

J. Informational: Commissioner reports

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

Commissioner Mosby, as a Clackamas County resident, thanked the Grand Ronde Tribes for the recent purchase of the former mill site. He noted that residents of Klamath and Lake County recently contacted him about Red Rock Biofuels, and a concern that the plant may not be eligible for renewable energy credits without adjustments to federal requirements for feedstock. The credits are an element of the plant's overall operations planning.

Commissioner Kile discussed her engagement with OWEB rule development for monitoring. She also noted a recent publication that validated the effectiveness of regulations to protect public health related to arsenic and drinking water protection.

Chair George noted her interest in a future-looking report and update from DEQ staff, on a periodic basis that would cover major issues and events that may occur before the next commission meeting. Director Whitman noted his commitment to providing that type of document for the commission based on existing staff work and that the agency will respond with options.

Chair George adjourned the meeting at 4:07 p.m.