

Minutes of the 386th regular meeting of the Oregon Environmental Quality Commission

Dec. 9-10, 2015
DEQ headquarters
Room EQC-A, 10th floor
811 SW 6th Avenue, Portland

Wednesday, Dec. 9, 2015: 8:30 a.m. to 4 p.m.

Chair O'Keeffe convened the meeting at 8:30 a.m.

Present: Chair O'Keeffe, Vice-chair Armstrong, Commissioner Rider, Commissioner Johnson and Commissioner Eden (by telephone)

A. Action item: Meeting minutes

Commissioners reviewed the proposed draft minutes from the October 14-15 regular meeting and November 5 work session.

Action: Approve the October 14-15 regular meeting and November 5 work session meeting minutes as presented

Move: Commissioner Johnson

Second: Vice-chair Armstrong

The commission unanimously approved the action

B. Informational and discussion item: Budget and legislative updates

Greg Aldrich, Office of Policy and Analysis manager, presented information about the DEQ Operating Budget for 2015-17, the development process for DEQ's 2017-19 Agency Request Budget and legislative information.

Director Pedersen provided additional information about the budget and 2016 Legislative session, and the commissioners asked clarifying and informational questions about the information.

C. Action item: Draft final order regarding a recent contested case

Larry Knudsen, the commission's legal counsel, presented a draft final order for commission action in a contested case matter. The case, No. LQ/SW-ER-11-108 regarding Kinzua Resources, LLC; ATR Services, Inc.; Frontier Resources, Inc.; and Gregory M. Demers, was presented to the commission at its August 2015 regular meeting and commissioners requested specific amendments and follow-up prior to a final order decision. The commissioners made no changes to the proposed draft order and asked clarifying questions about the order.

Action: Approve the staff recommendation and attachment for the report: Issue the final order as presented and authorize Director Dick Pedersen to sign the order on behalf of the commission

Move: Commissioner Rider

Second: Commissioner Johnson

The commission unanimously approved the action

D. Informational and discussion item: Contested case process

Leah Feldon, Office of Compliance and Enforcement manager, and Sarah Wheeler, Environmental Law Specialist, presented follow-up discussion item for the commission to consider incorporating a subpanel process for the review of contested cases. Feldon notes that the item is a follow-up to informational presentations by DEQ's Office of Compliance and Enforcement.

Wheeler outlined the proposed subpanel process and DEQ's recommendations for the subpanel options. Commissioners asked clarifying and informational questions, and Larry Knudsen, commission legal counsel, provided some additional responses and clarification.

Commissioner Eden expressed support for keeping the contested case process as-is, with a potential to add executive sessions for greater detailed information from legal counsel into the process as needed and with strict guidelines for not deliberating on the matter in those sessions. Commissioner Johnson noted that she prefers the subpanel idea for very complicated matters, and is also comfortable with the process as-is with the opportunity for executive sessions as needed. Vice-chair Armstrong noted support for more policy discussion and opportunities for commission reflection or direction on policy at an appropriate time. Commissioner Rider expressed her support for the executive session opportunity, with very specific language outlining what can and cannot be discussed by commissioners and understanding the public perceptions associated with any executive session. Chair O'Keeffe noted some uncertainty about what content would be included in the executive session, but noted her support for that process for the commission.

The commissioners agreed that there is no need to have a subcommittee process and supported the use of a special executive session associated with the contested cases. Director Pedersen stated that DEQ will bring additional information and a formal recommendation to an upcoming commission meeting for the process and parameters for using an executive session during the contested case presentations.

E. Action item: Proposed temporary rules for asbestos

Claudia Davis, Western Region Air Quality manager and statewide Asbestos Program manager, introduced the item. Kieran O'Donnell, Environmental Law Specialist, presented proposed temporary rules regarding the survey, handling and disposal of residential building materials that may contain asbestos. He noted that the proposed temporary rules are to implement Senate Bill 705, approved by the Oregon Legislature in 2015.

O'Donnell described the proposed rules, including the justification for the proposal of temporary rules. Commissioners asked clarifying and informational questions about the proposed temporary rules and also about the asbestos program. Commissioner Johnson expressed interest in evaluating the exemption date, currently proposed for 2004, to be a later date in the final proposed rules. DEQ committed to ensuring any final proposal includes data and information to support an exemption date.

Action: Determine that failure to act promptly would result in serious prejudice to the public interest or interest of the parties concerned, as provided in the Justification section, and approve the temporary rules in attachment A

Move: Commissioner Rider

Second: Vice-chair Armstrong

The commission unanimously approved the action

F. Action item: Proposed rules for greenhouse gas reporting requirements

Jeffrey Stocum, Air Quality Technical Services manager, introduced the item. Elizabeth Elbel, Greenhouse Gas Reporting Section staff, presented proposed rules to revise greenhouse gas reporting requirements for some sources in Oregon. Elbel noted that the proposed rules reduce administrative burden for the sources and businesses required to report to DEQ and otherwise improve the program's operations. Commissioners asked clarifying and informational questions about the program and the proposed rules.

Action: Approve the proposed rules in attachment A

Move: Vice-chair Armstrong

Second: Commissioner Johnson

The commission unanimously approved the action

This item was taken out of order

L. Informational item: Commissioner reports

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

Commissioner Rider presented updates on recent activities at OWEB, including focused investments for watershed projects around Oregon. She also noted that a ballot measure to support Outdoor School will be entered in the 2106 Legislative Session.

Vice-chair Armstrong noted that he is meeting with his Board of Forestry liaison regarding upcoming Forestry actions, as he was unable to attend the recent Board meeting in his commissioner capacity. He added that he has draft documents for Director Pedersen's annual review for the commission's review at this meeting prior to the review in early 2016.

Chair O'Keeffe explained that she is chairing a DEQ advisory committee for woodstoves, and that group meets in Bend next week. She will attend a Board of Agriculture meeting next week in her EQC liaison capacity.

Commissioner Johnson presented updates about a recent Water Resources Board meeting and discussions.

Greg Aldrich, Office of Policy and Analysis manager, presented proposed changes to 2016 EQC meeting dates. The commissioners discussed options and alternatives for meeting dates in early 2016 based on scheduling conflicts. Aldrich noted that DEQ will work to schedule joint meetings with liaison boards and commissions, and also on topics previously requested by the commission.

Chair O'Keeffe recessed the commission for lunch from 11:30 a.m. to 12:45 p.m.

G. Action item: Proposed rules for Oregon's Clean Fuels Program

David Collier, Air Quality manager, introduced the item. Cory-Ann Wind, Air Quality specialist, presented proposed rule revisions and changes for the Oregon Clean Fuels Program. Collier noted that the proposed rules implement Senate Bill 324, approved by the 2015 Oregon Legislature.

Wind described the proposed rule updates, advisory committee decisions, the public comment process for DEQ and expected outcomes if the proposed rules are approved. Commissioners asked clarifying and informational questions throughout the presentation and discussion. Director Pedersen provided additional clarifying comments about the proposed rules and Oregon's Clean Fuels Program. Paul Garrahan, Department of Justice, provided specific legal clarification on issues associated with cost containment within the program and language within the authorizing legislative bill.

Commissioner Johnson noted her support for the program and asked DEQ to bring a report to the commission in the middle or end of 2016 to assess the general feasibility of the program and a focus on the availability of lower carbon fuels. Vice-chair Armstrong noted his support for this type of informational presentation.

Action: Adopt the proposed rule amendments in Attachment A1 and Attachment A2 as part of Chapter 340 of the Oregon Administrative Rules

Move: Commissioner Rider

Second: Vice-chair Armstrong

The commission approved the action unanimously

H. Informational item: Advanced Hardwood Biofuels Northwest Project

Cory-Ann Wind, Air Quality specialist, presented information about a regional biofuels project. She introduced Patricia Townsend, Washington State University staff and project lead. Wind noted that the Advanced Hardwood Biofuels Northwest is a consortium of Pacific Northwest university and industry partners led by the University of Washington. The consortium is working to prepare Washington, Oregon, Northern California, and Northern Idaho for a sustainable hardwood bioproducts and biofuels industry.

Townsend described the project and its work to replace petroleum-based products with more sustainable materials derived from biodegradable resources. She described the project elements and emphasized that policy support for biofuels and bioenergy is critical for the sector's success.

Commissioners asked clarifying and informational questions about the project, discussed opportunities for additional partnerships and provided other general feedback on the project and presentation.

I. Action item: Proposed Medford Carbon Monoxide Limited Maintenance Plan

David Collier, Air Quality manager, introduced the item. Dave Nordberg, Air Quality transportation planning specialist, presented information about and a request for adoption of a new limited Maintenance Plan to replace Medford's first carbon monoxide Maintenance Plan adopted in 2002. Nordberg explained that the community continues to meet the air quality standard for carbon monoxide and the proposed plan would retain existing air quality control measures but remove transportation planning demonstrations no longer needed to protect air quality. The federal Clean Air Act requires a maintenance plan be in effect until 2022 for Medford.

Nordberg provided background information about carbon monoxide pollution in Oregon and specific efforts Medford has taken to improve its air quality over the past 20 years. He described the proposed changes, the public comment process and DEQ's recommendation for the limited maintenance plan for Medford.

Action:

1. Approve the limited maintenance plan for Medford, included with the staff report as Attachment B, as part of chapter 340 of the Oregon Administrative Rules
2. Adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules
3. Approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040
4. Direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval

Move: Commissioner Johnson

Second: Vice-chair Armstrong

The commission approved the action unanimously

J. Informational item: Clean Power Plan

Colin McConnaha, Climate Change specialist, presented information about Oregon's response and planning for the federal Clean Power Plan as proposed by EPA. He noted that this item is a follow-up to previous commission discussion about the federal plan and an opportunity for commissioners to ask questions and provide a process outline for federal and state actions in 2016. McConnaha described Oregon's current work to create the evaluation criteria and plan design.

This item was taken out of order

R. Informational item: Director's report

Director Pedersen presented written and verbal updates on agency, state and federal environmental topics of interest to the commission.

The written report included updates about:

- The Willamette River report card
 - Director Pedersen recognized Mike Mulvey, Water Quality data specialist and participant in the project, for his work on the report card
- EPA's support for Lakeview's air quality improvement efforts and denial of a petition to designate Lakeview in nonattainment
- Oregon's participation in international commitments for more zero-emission vehicles
- The 2015 Charitable Fund Drive, and DEQ employee generosity for charitable donations

Director Pedersen also provided verbal updates about:

- A recent decision by NOAA Fisheries to call jeopardy on DEQ's temperature standards and an assessment that EPA and Oregon must identify and protect cold water refugia areas in the Willamette and Columbia Rivers
- Flooding and other concerns for the north coast and other regions affected by severe weather, and opportunities for emergency and routine program responses.

- DEQ's presentation to the National Remedy Review Board for the Portland Harbor Superfund cleanup
- Social media figures for 2015, with a major growth trend over the year

Commissioners asked informational questions about several of the items presented. Deputy director Hammond presented the commissioners with their official DEQ nametags, in response to a commission request at a prior meeting.

Chair O'Keeffe recessed the commission at approximately 4 p.m. until 9 a.m. on Thursday.

Some members of the commission and DEQ staff met for an informal dinner in downtown Portland on Wednesday evening. No commission business was held at the optional, self-pay social dinner event.

Thursday, Dec. 10, 2015: 9 a.m. to 3:30 p.m.

Chair O'Keeffe reconvened the meeting at 9 a.m.

Present: Chair O'Keeffe, Vice-chair Armstrong, Commissioner Rider and Commissioner Johnson

K. Public forum

Prior to the start of public forum, Chair O'Keeffe welcomed Marty Myers, member of the Board of Agriculture and liaison to the commission. Chair O'Keeffe opened public forum at 9:05 a.m. Nine people presented comment in Portland.

1. John Sandie, United Neighborhoods for Reform, discussed asbestos survey requirements and asked the commission to direct DEQ to require proof of the survey and abatement prior to residential demolition. He submitted a copy of his comments to the commission.
2. Daniel Serres, Columbia Riverkeeper, presented comments on liquefied natural gas, specifically the Pacific Connector Pipeline and Jordan Cove Project. He noted his support for DEQ to review the proposed project and protect human health and the environment by not approving the pipeline and terminal.
3. John Krallman, Neighbors for Clean Air, discussed hazardous air pollutants and the cumulative impacts of multiple sources in close proximity. He noted that the Portland Air Toxics Solution plan does not meet the requirements approved by the commission in 2003 and asked the commission to direct DEQ to reassess and revise the air toxics reduction plan to include requirements for action.
4. Mary Scurlock, Oregon Stream Protection Coalition, presented comments on riparian rules under consideration by the Oregon Board of Forestry. She submitted a copy of her comments to the commission.

5. Alexander Harris, No LNG Coalition, presented comments opposing the proposed liquefied natural gas pipeline and terminal project. He read a letter from Liz Hyde, a landowner in Douglas County, asking DEQ to deny the project applications. He submitted a copy of the letter to the commission.
6. Brian Doyle, Stop the Dump, discussed concerns about seismic preparedness at Riverbend Landfill in McMinnville. He submitted a document in support of his comments.
7. Ilsa Perse, Stop the Dump, discussed a recent decision by the Land Use Board of Appeals, noting that an issue was remanded to the county and all permitting actions are on hold until the county assesses its decision. She provided a copy of the board's decision to the commission. She also asked the commission to direct DEQ to provide the data and background supporting the agency's disagreement with a report submitted by the Stop the Dump coalition this summer.
8. Ramsey McPhillips discussed concerns with leachate issues at Riverbend Landfill. He noted that an earthquake will result in leachate being trapped in the landfill's area and into the Yamhill River.
9. Dale Feik presented comments on a number of environmental concerns. He submitted a document in support of his comments related to greenhouse gas emissions in Oregon. He also noted his support for DEQ's work to improve its infrastructure technology and noted his involvement in the water quality trading policy forums.

Chair O'Keeffe closed the public forum at 10 a.m.

M. Action item: Proposed Water Quality Trading Program rules

Jennifer Wigal, Water Quality manager, introduced this item. Courtney Brown, policy analyst, presented the proposed rules for a Water Quality Trading Program. Brown explained that the proposed rules formalize voluntary permit conditions related to trading credits for certain water quality improvements.

Brown described the content of the proposed rules, DEQ's public outreach and comment process and issues raised during the development of the rules. Commissioners asked clarifying and informational questions throughout the presentation.

Action: Adopt the proposed rules in attachment A as part of Chapter 340 of the Oregon Administrative Rules

Move: Commissioner Johnson

Second: Vice-chair Armstrong

The commission approved the action unanimously

Following the commission's action, Chair O'Keeffe welcomed Anthony Barber, EPA Oregon Operations office, who presented EPA's formal comments in support of Oregon's water quality trading rules. Director Pedersen provided additional comments about water quality trading in Oregon and the importance of the commission's action to improve Oregon's environment.

N. Action item: Proposed Water Quality Permit Fee increases

Ron Doughten, Water Quality Permit Program manager, introduced this item. William Knight, Water Quality Permit Program analyst, presented a proposed 12 percent fee increase for most types of Water

Quality Program permits. Knight described the content of the proposed fee changes and rule revisions, the public outreach and comment process and other elements of the proposed rules. Adam Coutu, budget analyst, provided additional information about the financial specifics associated with the proposed fee and rule changes. Commissioners asked clarifying questions and noted their concerns with the permit backlog in the Water Quality Program.

Commissioners requested that DEQ present information based on measures or metrics about how the fee increase and other program improvements will reduce the agency's permit backlog. Director Pedersen described the measures in place to reduce the backlog and stated that DEQ can bring an update to the commission in 2016.

Action: Adopt the proposed rules in attachment A as part of Chapter 340 of the Oregon Administrative Rules, with the rules to become effective on Jan. 1, 2016.

Move: Vice-chair Armstrong

Second: Commissioner Johnson

The commission approved the action unanimously

Working lunch and executive session

The commission and some DEQ staff met over a working lunch from approximately noon to 1:30 p.m. for an executive session with Department of Justice representatives. This working lunch was held in accordance with Oregon public meeting rules.

O. Action item: Proposed updates to the CAFO memorandum of understanding with the Department of Agriculture

Beth Moore, Water Quality permit specialist, and Wym Matthews, Oregon Department of Agriculture, co-presented a proposed update to the memorandum of understanding governing the Confined Animal Feeding Operation. Moore explained that the current MOU expires Dec. 31, 2015, and the proposed update would incorporate some clarifying information and be in effect through Dec. 31, 2020. She described the elements of the CAFO program and conditions of the MOU. Matthews provided additional detail about the inspection and follow-up processes for CAFO permit holders. Commissioners asked clarifying and informational questions about inspections and compliance, major event response provisions and general program details.

Action: Approve a new memorandum of understanding between DEQ and ODA for CAFOs to be in effect until Dec. 31, 2020.

Move: Vice-chair Armstrong

Second: Commissioner Johnson

The commission approved the action unanimously

P. Informational item: Tree for All recognition

Avis Newell, Water Quality specialist, introduced this item. Bruce Roll, Clean Water Services, presented information about the Tree for All program, which plants native trees along Oregon's streams to reduce in-stream temperature and provide habitat. Roll showed a short video highlighting the program's success. Following his presentation, he gave DEQ an award recognizing its support for the Tree for All program and its efforts to improve Oregon's environment.

Q. Informational item: Oregon's earthquake resiliency

Ian Madin, Oregon's State Geologist, presented the science behind the projected Cascadia Subduction Zone earthquake hazard. He also discussed the likely consequences and challenges of recovery from a major earthquake event and Oregon's formal earthquake resiliency plan. Commissioners asked informational questions and engaged in discussion about the Cascadia Subduction Zone earthquake. Commissioner Rider asked for an update on DEQ's emergency plans as part of the next director's report.

Chair O'Keeffe adjourned the commission meeting at approximately 3:30 p.m.

2016 meeting dates

February 2-3: Salem

April 20-21: Location TBD

June 15-16: John Day

August 17-18: Location TBD

November 2-3: Ashland