

Minutes of the 388th regular meeting of the Oregon Environmental Quality Commission

April 20-21, 2016

Oregon Convention Center
777 NE MLK Blvd., Portland
Room E141-142

Wednesday, April 20, 2016

Chair O’Keeffe convened the meeting at 10:30 a.m.

Present: Chair Jane O’Keeffe, Vice-chair Ed Armstrong, Commissioner Colleen Johnson, Commissioner Morgan Rider and Commissioner Melinda Eden

A. Action item: Meeting minutes

Commissioners reviewed the proposed draft minutes from the Feb. 3, 2016, regular EQC meeting and made no changes to the draft minutes as presented.

Action: Approve the Feb. 3, 2016, EQC meeting minutes as presented

Move: Vice-chair Armstrong

Second: Commissioner Johnson

The commission unanimously approved the motion

B. Information item: Welcoming Interim Director Pete Shepherd

Pete Shepherd began his appointment as Interim DEQ Director on April 20, as directed by the commission. He presented opening comments regarding his role and intent as interim director for the agency.

C. Action item: Proposed permanent rules for asbestos program updates

Claudia Davis, Asbestos Program Manager, introduced the item. Keiran O’Donnell, Environmental Law Specialist, presented the proposed rules, including public comments. O’Donnell noted that the proposed updates are an update of temporary rules approved by the commission in December 2015. He presented the substantive and minor changes proposed for the final rules, and noted that DEQ intends to do an additional program update in 2017 and may make additional rule proposals at that time.

Throughout the staff presentation, commissioners asked clarifying and informational questions about the proposed rules. O’Donnell explained that the recommendation noted in the staff report has a typographical error and the commission’s action should accept attachment B, not A, as the final rule language. Gary Vrooman, the commission’s legal counsel, provided clarifying information for the motion language.

Action: Repeal the temporary rules and adopt the revised permanent rule changes shown in attachment C and incorporated without markup in attachment B as part of Chapter 340 of the Oregon Administrative Rules.

Move: Commissioner Eden

Second: Vice-chair Armstrong

The commission unanimously approved the motion

Commissioner Eden noted her continued strong support for updates to DEQ's electronic reporting systems and other digital tools, and expressed that this remains her highest priority for agency improvements.

D. Informational item: Budget and legislative updates

Greg Aldrich, Office of Policy and Analysis Manager, introduced this item. Palmer Mason, Legislative Liaison, presented a summary of the 2016 Oregon Legislative Session outcomes and information looking forward to the 2017 Session. Aldrich also presented updates on agency, state and federal budget information. Commissioners presented their feedback on budget and legislative ideas and planning for the next sessions, and the commission's role and opportunities to engage in planning and development of agency agendas. They also offered comments on their priorities and areas of interest for DEQ to pursue in the 2017 Legislative Session.

Lunch - Chair O'Keeffe recessed the commission for lunch at 12:50 until 2 p.m. She noted there is no executive session over the lunch, as had been previously publicized.

Commissioner Johnson was not present for items E, F and G.

E. Action item: Petition for Outstanding Resource Water designation, North Fork Smith River

Debra Sturdevant, Water Quality Standards Program Specialist, introduced the item and described the request to designate the North Fork of the Smith River as an Outstanding Resource Water. She outlined the commission's options for actions, the process DEQ used to evaluate the request and what next steps could be following EQC actions. Commissioners asked clarifying and informational questions about the petition, and generally about the Outstanding Resource Water determination process. Jennifer Wigal, Water Quality Program Manager, and Larry Knudsen, Department of Justice, provided additional information in response to commissioner questions.

Gordon Lyford, the petitioner, presented additional information regarding his petition. Grant Werschkull, Smith River Alliance, provided comments in support of Lyford's petition.

Rob MacWhorter, Supervisor for the Rogue-Siskiyou National Forest, provided contextual information about the area. He explained that the U.S. Forest Service is the landowner and management entity for the areas surrounding the North Fork of the Smith River. MacWhorter provided additional comments in support of the petition.

Following the presentations, the commission took comment from the audience regarding this item. Five people submitted registration forms to present comment.

1. Grant Werschkull, Smith River Alliance, presented comment during the item presentation and did not present additional comments.

2. David Moryc, American Rivers, presented comment in support of the petition.
3. Mary Anne Nash, Oregon Farm Bureau, presented comment in opposition of the petition due to its potential to set precedent for the state.
4. Tom Derry, Native Fish Society, presented comment in support of the petition.
5. Becky Crockett, representing a number of groups including the Brookings School Board, Crescent City Council, Del Norte County Farm Bureau and Coos-Curry Farm Bureau, presented comment in opposition to the petition.

Following the comments, the commissioners asked additional clarifying and informational questions for staff and co-presenters and engaged in discussion about its options and next steps.

Action: Grant the petition for rulemaking and, as part of the rulemaking process, direct DEQ staff to apply the technical analyses from the June 1995 Outstanding Resource Waters Implementation Plan to the North Fork of the Smith River

Move: Vice-chair Armstrong

Second: Commissioner Rider

The commission unanimously approved the action

F. Informational item: Commissioner reports and agenda planning

Commissioners presented updates on their recent activities and other items of interest to the commission. Commissioner Johnson was not present for this item and submitted a report regarding recent Water Resources Commission activities and her role as liaison to that body.

Vice-chair Armstrong noted that he will attend the next Board of Forestry meeting later this month. That is also the last meeting for Gary Springer, Board of Forestry liaison to EQC.

Chair O’Keeffe noted that she will be stepping down from the DEQ Audit Committee, and welcomed a new commissioner to join that committee.

Greg Aldrich, Office of Policy and Analysis Manager, provided some updates on planning for future meetings.

- June 8-9: Joint meeting the Board of Agriculture in John Day
- Potential special meeting, or meetings, in late June or July regarding the director’s recruitment process and also budget and policy development, including the vision for the agency as workshop topics for the commissioners
- August 17-18: Joint meeting with Water Resources Commission (location tentatively near Boardman)
- November 2-3: Joint meeting with Board of Forestry in Ashland

Items requested:

- Update on the status of the NPDES permit backlog (potentially in August, may be November pending final reports)
- Woodsmoke Advisory Committee recommendations (August)
- Portland Harbor status update and discussion with EPA (November)

With the commission's agreement, Chair O'Keeffe welcomed Mike Freese, Associated Oregon Industries, regarding the qualifications and criteria for the recruitment of the permanent DEQ director. Freese presented a list of desired criteria for the commission's consideration.

The commission postponed item G until Thursday, April 21, as time allowed

G. Informational item: Director's report

Chair O'Keeffe recessed the commission from 4:45 to 6 p.m. Commissioner Rider was not present for item H.

H. Public comment: Draft criteria for recruitment of DEQ's permanent director

At 6 p.m., Chair O'Keeffe reconvened the commission for a public comment opportunity specific to proposed draft criteria and processes for the recruitment of DEQ's permanent director.

Five people submitted registration forms to present comment.

1. Dale Feik, Hillsboro Air and Water, presented comments on his input for the criteria used in the recruitment of the permanent DEQ director.
2. Jim Orr, AFSCME Local 336 President, presented comments expressing appreciation for the opportunity to represent feedback from the DEQ staff members the union represents, and his commitment to communicating with the commission throughout the recruitment process.
3. Susan Garber presented her input regarding the director recruitment, including the need for a strong advocate for increased agency funding, strengthening the state environmental laws and a health-based approach to environmental protection.
4. Eric Feeley, DEQ staff and Chief Steward for the employee union, presented comments representing about 15 staff members at the laboratory.
5. Karen Williams, DEQ staff and union secretary, urged the commission to conduct an exhaustive national search for a director with the expertise and background to lead a workforce of highly technical environmental professionals.

Chair O'Keeffe recessed the commission at 7:30 p.m. until 8:30 a.m. on Thursday, April 21.

Thursday, April 21, 2016

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

I. Action item: Proposed temporary rules for air toxics

Leah Feldon, Office of Compliance and Enforcement Manager, introduced the item and noted the presentation is for proposed temporary rules that were previously presented to the commission in March, and modified following a 14-day public comment period. Feldon

described the public comments DEQ received during this period and gave an overview of the proposed temporary rules, including the relationship between the federal regulations and the continued state need for the temporary rules.

George Davis, Air Quality Program Specialist, presented additional detail on the proposed temporary rules regarding air quality emissions from facilities within the Portland Air Quality Maintenance Area that manufacture colored glass for use in art, architecture, interior design and other similar decorative applications, or that manufacture glass products for use by manufacturers of colored glass for use in art, architecture, interior design and other similar decorative applications. David Farrer, Oregon Health Authority, provided additional clarification about health risk-based standards and values.

Throughout the presentation, commissioners asked clarifying and informational questions about the proposed temporary rules, the relationship to federal regulations and other elements of the temporary rule process.

Action: Approve and adopt the findings justifying adoption of a temporary rule as set forth in the staff report and the addendum to the staff report, and adopt the proposed temporary rules in attachment A, as amended by the addendum, as part of chapter 340 of the Oregon Administrative Rules.

Move: Commissioner Johnson

Second: Vice-chair Armstrong

Following the motion, Commissioner Rider noted her opposition to the action as it sets a precedent for DEQ that is not resource-appropriate when federal and other effective standards will be protective of human health without additional regulation.

The commission approved the action with four in support and one in opposition.

Support: O'Keeffe, Armstrong, Johnson and Eden

Oppose: Rider

Abstain: None

This item taken out of order

O. Action item: Criteria and process for permanent director recruitment

Enrique Sama, Department of Administrative Services Executive Recruiter, presented proposed final criteria, requirements and processes for the recruitment and hiring of a permanent DEQ director. The commissioners reviewed the information, discussed their requests and direction for the next steps for the recruitment and hiring process.

Action: Appoint Commissioner Eden and Vice-chair Armstrong to serve as the subcommittee to assist with the recruitment

Move: Commissioner Rider

Second: Commissioner Johnson

The commission unanimously approved the action

Action: Adopt the recruitment criteria as presented in the survey distributed in April 2016, with changes discussed at the April 21 meeting and the education requirements as discussed at the April 21 meeting; and direct DEQ and DAS to begin the recruitment process

Move: Commissioner Rider

Second: Commissioner Johnson

The commission unanimously approved the action

Action: Direct the recruitment subcommittee to return with a formal recommendation at the June regular EQC meeting for the form of public process for interviewin finalist candidates

Move: Commissioner Johnson

Second: Commissioner Rider

The commission unanimously approved the action

The commission took item J in two parts to meet scheduling needs.

J. Informational item: Air Quality Program overview

Merlyn Hough, Lane Regional Air Protection Authority Director, provided an overview of LRAPA's programs, its relationship to DEQ and the local successes and challenges of the regional air program. Commissioners asked clarifying and informational questions throughout the item.

K. Informational item: Engagement plan and process for developing permanent air toxics rules

Interim Director Shepherd, Director Lynn Saxton, Oregon Health Authority, and Leah Feldon, Office of Compliance and Enforcement Manager, presented a draft plan and timeline for development of permanent air toxics rules, including planned community engagement and other outreach efforts.

The commissioners asked clarifying and informational questions about the plan and process, and indicated their support for these next steps.

Commissioner Eden left the meeting at approximately noon on Thursday, April 21.

L. Public comment: Engagement plan and process for developing permanent air toxics rules

At approximately noon, the commission opened a comment opportunity specific to the air toxics items discussed during the commission's meeting.

Seven people presented comments for the commission regarding air toxics, generally, and specific to the items discussed as part of the commission's meeting agenda.

1. Amy Bacher, EPAC, asked a number of questions about emissions near Bullseye Glass in SE Portland and encouraged the commission to involve the public and provide responses to her concerns and others as raised through the temporary rule process for air toxics.

2. Dale Feik, Hillsboro Air and Water, expressed that any commission decisions must be made in the light of serious prejudice to public health, and not prejudice against industry interests. He encouraged EQC to use health-based risk understanding when developing rules and other air quality standards.

3. Jennifer Jones, EPAC, stated a need for continuous emissions monitoring, mandatory toxic use reporting and health-based standards for air toxics in Oregon. She encouraged the commission to draft strong rules to protect all Oregonians at a very health-protective level.

4. Joshua Baker, EPAC, expressed concern with self-modeling and source testing by industry, and encouraged the commission to require third-party modeling and testing. He also noted changes he would encourage in any permanent air quality toxics rules.

5. Zena Rockowitz, NE Coalition of Neighborhoods, requested comprehensive data from DEQ regarding the presence and levels of hexavalent chromium in all of Portland, including the identification of sources for this and other toxic metals identified as “hot spots”. She requested that information be publicly available to all, including in non-English languages, and permits be published. She requested clarification on timelines associated with information provided to Oregonians.

Interim Director Shepherd noted that DEQ, and Cleaner Air Oregon, will be using the principles and actions of environmental justice as central to its processes.

6. Jessica Applegate, EPAC, expressed concern about unfiltered stack testing and that the standards are technology-based, not actual risk-based elements. She noted her worry about the uncontrolled furnaces until the September 1 deadline for furnace controls under federal law.

7. Cindy Young, EPAC and neighbor of Bullseye Glass, noted her long-time proximity to the emissions at Bullseye Glass. She questioned the use of standards from New Hampshire instead of California’s more stringent environmental laws and expressed concern about other heavy metals and toxics beyond the ones currently used as the focus contaminants in DEQ’s rules.

8. Mary Peveto, Neighbors for Clean Air, expressed a need to deal with diesel pollution as part of Cleaner Air Oregon.

Lunch - Chair O’Keeffe recessed the commission for lunch from approximately 12:35 to 1:30 p.m.

M. Public comment: General

Chair O’Keeffe reconvened the commission at 1:30 p.m. for public forum.

Three people presented comment.

1. Ilsa Perse, Stop the Dump Coalition, presented comment regarding Riverbend Landfill. She urged the commission to take actions that could stop the landfill’s expansion.

2. Ramsey McPhillips, Riverbend Landfill neighbor, presented additional comments regarding Riverbend Landfill and expressed his ongoing concerns regarding leachate and other issues at the site, including seismic vulnerability. He asked the commission and DEQ to postpone any decisions until the issue can be reviewed more deeply, and with a focus on potential effects of earthquakes on leachate systems at Riverbend.

3. Susan Garber expressed her support for strengthening and increasing DEQ's budget. She also requested that DEQ more closely study the health effects of diesel emissions and include diesel in the permanent air quality toxics rules being developed through the Cleaner Air Oregon efforts.

This item taken out of order

J. Informational item: Air Quality Program overview

Following the close of public comment, the commissioners revisited item J for the DEQ staff portion of the presentation.

Sarah Armitage, Air Quality Planning Program Lead, introduced the item and presented an overview of the agency's Air Quality Program. Armitage discussed DEQ's partnerships with state, federal and local governments, the agency's statewide air quality monitoring network, longer-term air quality trends statewide and community-based efforts to meet air quality standards. She also described DEQ's air toxics program in more detail, and summarized that the program is organized to target reductions that affect multiple pollutants with one action rather than individual reductions for specific pollutants.

Sue MacMillan, Air Quality Program Toxicologist, discussed risk- and health-based standards programs, including the air quality protection programs in California and Washington. She noted that these two states have used health-based standards for over 20 years, and they will serve as good models, along with other states and municipalities, for Oregon as it develops its program.

Throughout the presentation, commissioners asked clarifying and informational questions about the program and next steps.

N. Action item: Proposed temporary rule revisions for the Oregon Clean Fuels Program

Wendy Wiles, Environmental Solutions Division Administrator, introduced this item. Cory-Ann Wind, Oregon Clean Fuels Program Manager, presented proposed temporary rule revisions for specific technical corrections within the existing Oregon Clean Fuels Program calculations. Wind explained that a calculation affecting several parts of the rules was missing one portion of its necessary equation, resulting in inaccurate final numbers within the permanent rules adopted by the commission in December 2015.

Wind described the need for the proposed temporary rules and provided some examples of the potential impacts of the calculation errors if not corrected. Commissioners asked clarifying and informational questions about the proposed temporary rules throughout the presentation.

Wind also provided a short program update, noting that the Oregon Clean Fuels Program will be working on its next phases in 2016 and 2017.

Draft x

Approved as presented

Approved with amendments

Action: Adopt the proposed temporary rules as proposed in Attachment A as part of chapter 340 of the Oregon Administrative Rules to be effective beginning on April 22, 2016, and 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 item's staff report

Move: Commissioner Johnson

Second: Vice-chair Armstrong

The commission unanimously approved the action.

Following the end of the item, Chair O'Keeffe requested that Commissioner Johnson serve on the DEQ Audit Committee.

Action: Nominate Commissioner Colleen Johnson to serve as EQC representative and member of the DEQ Audit Committee

Move: Chair O'Keeffe

Second: Commissioner Rider

The commission unanimously approved the action

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

2016 meeting dates and locations

June 8-9: John Day

August 17-18: TBD

November 2-3: Ashland