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Minutes of the 380th regular meeting of the Oregon Environmental Quality Commission

Nov. 5-7, 2014
Portland, Oregon
Multiple meeting locations

Wednesday, November 5 – 8:30 a.m. to 4:30 p.m.
Location: Emerald Room, The Tiffany Center – 1410 SW Morrison Street, Portland

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

A. Action item: Draft meeting minutes from August 2014

The commission reviewed draft meeting minutes from the Aug. 7, 2014, and Aug. 27-28, 2014, EQC meetings.

Action: Approve as presented
Move: Vice-chair Armstrong
Second: Commissioner Johnson

The commission unanimously approved the minutes as presented.

Chair O'Keeffe welcomed Jim James and Scott Hanson to present public comment. James and Hanson, representing the Oregon Small Woodland Association, presented their comments regarding the criterion for protecting cold water and asked the commissioners to consider all the reports and science in their evaluation of the standard. They submitted written comments reflecting their testimony.

B. Action item: Request for standards modification for total dissolved gas

Gene Foster, Watershed Section manager, introduced the item. Paula Calvert, Columbia River Coordinator, presented DEQ's recommendation to allow a modification to the standard for total dissolved gas at the four lower Columbia River dams operated by the U.S. Army Corps of Engineers. She described the use and process for spilling water to allow fish migration and explained that the request would allow a five-year modification of the standard during a specified period of each year for the purpose of voluntary spill and salmonid migration.

Commissioners asked clarifying and informational questions about the program and the proposed standard modification.

The commission expressed interest for DEQ to request specific information from the Corps regarding the cause of exceedences at its dams. Commissioner Eden noted her preference for

additional information prior to making decisions on this matter, and asked the commission to consider postponing its action until it can meet with the Fish Passage Center. Calvert and Foster provided information regarding the Corps' reports and options for action.

The commissioners asked DEQ to coordinate a work session for the commission to discuss their concerns prior to any action. Director Pedersen noted that the commission could hear an informational item at its January 2015 meeting with a special meeting for action after that. Larry Knudsen, the commission's legal counsel, noted that any additional information presented to the commission may require a new public comment period, as a matter of protocol.

At Director Pedersen's request, the commission took a short break for DEQ to assess options for action. Director Pedersen recommended that the commission defer this decision to a special meeting after January with an informational item at the January meeting, with plans for a new public comment period and other protocol for process. The commission requested a work session on this item for the January 2015 regular meeting.

The commission took no action on this item.

The commission joined the Oregon Board of Forestry in its meeting space, the Crystal Room, for item C.

C. Informational item: Shared responsibilities for the Board of Forestry and EQC

DEQ and Department of Forestry staff co-presented information relevant to the commission and Board of Forestry. This item was in preparation for Thursday's tour of green stormwater infrastructure and urban forestry. The commissioners and board members asked clarifying and informational questions about the programs, areas of regulatory overlap for the two agencies and boards and general inquiries about water quality in Oregon.

D. Informational item: Clean Air Act section 111d greenhouse gas regulations

Leah Feldon introduced this item and explained that Colin McConnaha is the key staff member for this topic. McConnaha presented updates about new proposed federal standards and rules for greenhouse gas regulation. He described the emission guidelines and other information from EPA for the new proposed rules.

The commission asked clarifying and informational questions about the proposed federal regulations and DEQ's response to the regulations.

E. Action item: Temporary rules for greenhouse gas permitting

Leah Feldon, air quality manager, introduced the item and the co-presenters. Jill Inahara, air quality specialist and environmental engineer, and George Davis, air quality senior permit writer, presented the proposed temporary rules. Inahara noted that, if approved, the temporary rules would be applicable for six months unless made permanent by a second rule adoption, and DEQ does intend to present permanent rules in March 2015 for commission action.

Commissioners asked clarifying and informational questions. DEQ staff provided responses and Paul Garrahan, Oregon Department of Justice, provided additional responses specific to the legal elements of the proposed temporary rules.

> Action: 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 this item's staff report; and adopt temporary rule amendments as proposed in attachment A of this item's report as part of chapter 340 of the Oregon Administrative Rules to be effective upon filing with the Secretary of State.
>
> Move: Commissioner Eden
> Second: Commissioner Rider

The commission unanimously approved the temporary rules as presented.

Chair O'Keeffe recessed the commission for lunch from noon to 1 p.m.

F. Informational item: Water quality on agricultural and range lands

Representatives from the Oregon Cattlemen's Association presented about the association's work to protect water quality on agricultural and range lands across the state. Jerome Rosen, executive director, introduced Dr. Stephen VanVleet, who presented about water quality and grazing on agricultural and range lands. He discussed the approaches to livestock grazing for maximum environmental benefit and integrated land management for water quality protection.

The commissioners asked clarifying and informational questions about the presentation and discussed agricultural and range land management.

G. Informational item: Umatilla facility updates

Joni Hammond, DEQ Deputy Director, introduced the item and the presenters. Don Barclay from the U.S. Army's Chemical Materials Activity presented updates about the demolition and disposal status of the Umatilla facility. Barclay provided background on the work at the facility and explained that the former demilitarization depot is in final closure process and will be repurposed following full cleanup under the recommendations of the closure permits and plans.

Pat Mahandra, Umatilla Chemical Agent Disposal Facility, discussed the safety and protection safeguards at the facility, and described how the facility ensured it protected its workers and the environment. Barclay noted that the facility is in final closure process, and all activities for demolition, decontamination and closure are complete. At the end of the item, they presented a short slideshow video demonstrating the phases of the work and closure of the facility.

The commissioners commended the presenters for their work and continued communication with the commission.

H. Action item: Contested case hearing

The commission heard a contested case, which it had set over from the August regular EQC meeting. The case involved violations of asbestos regulations.

Larry Knudsen, the commission's legal counsel, provided background information on the case and described the commission's options for action regarding contested cases. Chair O'Keeffe polled the commissioners for ex parte contact or conflicts of interest, and none were reported.

David and Barbara Sullivan presented their case in the matter. Jenny Root and Les Carlough presented DEQ's case in the matter. Following each presentation, the parties were given five minutes for response or rebuttal prior to commission discussion and questions. The commissioners asked clarifying and informational questions and provided clarifying statements prior to taking action.

> Action: Issue a final order affirming Judge Barber's proposed and final order.
> Move: Commissioner Johnson
> Second: Vice-chair Armstrong

The commission unanimously approved this action.

Commissioner Rider noted her support for the action and also her support for the commission evaluating the ongoing utility of the commission's review for contested cases.

I. Action item: Water quality permit fee increase proposal

Jennifer Wigal, water quality manager, introduced the item and provided background on the permit program. William Knight, water quality policy analyst, presented the proposed 2.9 percent fee increase for most types of water quality permits. Wigal described the public comment process for this proposed fee increase and DEQ's involvement with the standing Blue Ribbon Advisory Committee related to the proposed fee increase.

The commission asked clarifying and informational questions about the proposal. Commissioner Johnson expressed significant concern with the letters received regarding DEQ's ability to meet its water quality permit issuance metrics. She noted her expectation that DEQ meet its metrics much more successfully in 2014 and 2015 prior to any additional fee increase requests. Commissioner Rider asked DEQ for a formal update on its metrics and process improvements for water quality permit issuance in 2015. Wigal noted these requests and committed to bring an update to the commission in early 2015. Vice-chair Armstrong noted that private septic systems are a major environmental concern, and DEQ must be cautious to not dis-incentivize proper septic system management due to higher fees.

Director Pedersen presented comment on the status of DEQ's water quality permit program and addressed many of the commissioners' questions on the proposed fee increase. He reinforced the commitment to have DEQ return with an update in early 2015 and provide additional information for the commission.

Action: Adopt the proposed rules in attachment A as part of chapter 340 of the Oregon Administrative Rules.
Move: Vice-chair Armstrong
Second: Commissioner Rider

The commission unanimously approved the action

J. Informational item: Commissioner reports
Commissioners provided verbal updates on their activities and other items of interest to the commission.

Commissioner Rider reported on her work with the Oregon Watershed Enhancement Board and its recent annual meeting for grant review and approvals. She noted that OWEB is evaluating its long-term funding strategy. She explained that OWEB's leadership has recently changed and there is a lot of change, generally, at the board. She encouraged DEQ to participate in the review and selection of priorities for the next funding cycle.

Vice-chair Armstrong explained that he and Gary Springer, Board of Forestry member, continue their conversations about a water-focused summit in October 2015. He stated that he recently attended a tour with the Board of Agriculture in the Enterprise area and that board expressed interest in a liaison-style position with EQC.

Chair O'Keeffe explained that she recently attended the annual meeting of the Oregon Forest Industries Council and presented to that group. She also attended the DEQ audit committee meeting this week.

Commissioner Johnson explained that she has been travelling recently and was unable to attend the August Water Resources Board meeting but will attend the next one this month. She noted that she has attended several meetings with stakeholders for the Clean Fuels Program. Vice-chair Armstrong noted that he has attended similar meetings and all parties have been extremely complimentary to Cory-Ann Wind, the lead staff person for Clean Fuels.

Commissioner Eden attended the Water Resources Board social event to meet the new director and other board members in August. She noted that she has also met with various parties about the Clean Fuels Program and echoed the compliments to DEQ staff.

Chair O'Keeffe recessed the commission at approximately 4 p.m. until 8 a.m. on Thursday, November 6. On Wednesday evening, commissioners and some DEQ staff attended an informal evening social hosted by the Oregon Board of Forestry. No commission business was held at this event.

Thursday, November 6 – 8:30 a.m. to 4:30 p.m.
Location: Tiffany Center – 1410 SW Morrison Street, Portland

K. Informational item and tour: Green infrastructure and urban forestry

Staff from DEQ and the Department of Forestry will co-present about urban stormwater management and the connections to urban forestry. This item will include a tour of bioswales and other green stormwater management mechanisms in Portland.

Item K was presented jointly to EQC and the Board of Forestry in the Crystal Room at the Tiffany Center. The tour left the facility at approximately 9 a.m. The commissioners attended the tour from 9 a.m. to noon, and returned to the Tiffany Center at approximately noon for lunch. The afternoon session began at 1 p.m. in the Emerald Room of the Tiffany Center.

Chair O'Keeffe reconvened the meeting at 1 p.m.

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

L. Informational item: Clean Fuels Program Phase 2 rules

David Collier, air quality manager, introduced the item. Cory-Ann Wind, air quality planning staff, presented information about proposed draft rules for Phase 2 of the Clean Fuels Program. She noted that the informational item is followed by a public hearing on the proposed draft rules. DEQ will present final proposed rules for commission action in January 2015. Following the staff presentation, Margi Hoffmann, Governor Kitzhaber's energy policy advisor, presented information about the governor's 10-year Energy Plan and other state energy policies. Commissioners asked clarifying and informational questions about the program and proposed rules.

M. Public hearing: Clean Fuels Program Phase 2 rules

The commission opened a public hearing at 1:20 p.m. Larry Knudsen, the commission's legal counsel, provided overview and process information to begin the hearing. Each person providing comment was asked to complete a short registration form and limit comments to five minutes or less. Comments were taken in the order the sign-up sheets were received.

Thirty-three people signed up to present comment, and several provided written testimony in addition to their comments. People presented comment both in opposition and support of the proposed Phase 2 rules and the Clean Fuels program in general. Commissioners asked clarifying and informational questions about specific comments as they were presented.

Commissioner Johnson noted her concerns about the program's feasibility and expressed support for a panel of experts to present to the commission on this issue prior to any EQC action on the Clean Fuels program's proposed Phase 2 rules in January 2015. Chair O'Keeffe noted her agreement with the concerns Commissioner Johnson expressed. Director Pedersen provided an explanation of process related to the requests and the commissioners discussed their options for additional information and learning prior to any decision. Larry Knudsen, the commission's legal counsel, provided additional detail on the public hearing and comment requirements.

At the commission's request, several commenters provided additional clarifying comments regarding the commissioners' concerns about feasibility and discrepancies between economic analyses. Director Pedersen noted that DEQ staff can provide informational briefings to the commissioners, individually or in a group at a special meeting, between this meeting and the proposed January 2015 action.

Chair O'Keeffe closed the hearing at 4:45 p.m.

Chair O'Keeffe recessed the commission at approximately 4:45 p.m. until 8:30 a.m. on Friday, November 7. On Thursday evening, commissioners and some DEQ attended an informal and self-pay social dinner in downtown Portland.

No commission business was conducted during this dinner.

Friday, November 7 – 8:30 a.m. to 1 p.m.
Location: Room EQC-A, DEQ headquarters – 811 SW 6th Avenue, Portland

Chair O'Keeffe reconvened the meeting at 8:35 a.m.

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

N. Public forum

The commission reconvened at 8:35 a.m. for public forum. Comments were taken in the order they were received. People were able to present comment in-person in Portland at DEQ's headquarters or via conference call at several DEQ offices.

Call-in offices:
Bend: 475 NE Bellevue
Eugene: 165 East 7th Avenue
Medford: 221 Stewart Avenue
Pendleton: 800 SE Emigrant

Six people presented comment in-person, and no people presented comment by phone.

1. Kelly O'Hanley, Climate Action Coalition, presented comment regarding the transport of oil and coal. She asked the commission to deny certification of Morrow Pacific's 401 water quality certification. O'Hanley submitted a copy of her testimony for the commission.

2. Jill Eiland, Intel, thanked the commission for approving the temporary rules for greenhouse gas permitting and noted that the approval indicates that Oregon's regulatory

system supports its industries while protecting the environment and public health. She described some of Intel's environmental work.

3. Dale Feik, Washington County Citizen Action Network, presented comment regarding air quality and Intel's proposed Title V permit. He requested that the commission deny the permit and not revise its permitting rules in March 2015. Feik submitted a copy of his testimony and additional documents for the commission's consideration.

4. Marilee Dea, Oregon Nurses' Association and Sierra Club, presented comment in opposition to coal and oil exports. She noted that the transport and export of coal and oil threatens public health and the environment. Dea discussed the extreme effects of climate change, drought and environmental emergencies caused by the pollution from fossil fuels. She submitted several document to the commission regarding climate change from fossil fuels. She asked DEQ to deny the 401 water quality certification application for coal and oil transport at Coyote Island Terminal and expand the scope of review to include all potential environmental effects of the materials.

5. Patricia Bellamy, Oregon Nurses Association and American Nursing Association, presented comment regarding health issues associated with coal transport and export. She asked DEQ to review all environmental impacts from the Coyote Island Terminal project and do an extremely rigorous review of the 401 water quality certification application.

6. Bonnie McKinlay, Portland resident, read the testimony of Douglas Morton, St. Helens City Council President. Morton's comments expressed the concern of St. Helen's residents and opposition to coal transport and export and requested that DEQ deny any permits that increase the transport of coal through St. Helens.

Chair O'Keeffe closed the public forum at 9:10 a.m.

Following the close of public forum, Director Pedersen noted that DEQ has extended the public comment period for the Clean Fuels proposed Phase 2 rules for two weeks, now closing at 5 p.m. on Friday, Nov. 21, 2014, with an additional public hearing Nov. 20, 2014. Commissioner Johnson noted her appreciation for the extension of the comment period and scheduling an additional public hearing. She requested additional information on specific elements of the proposed rules:

1. What is the success, or failure, of California's program, in the state's experience?
2. Feasibility: Is there sufficient quantity of alternative fuels available in the current and projected future supply to make the program successful? What are the availability projections based on?
3. Feasibility: Is the carbon intensity of alternative fuels sufficient, and low enough, to meet the standards?
4. How would the acquisition and use of credits work in the program?

Larry Knudsen, the commission's legal counsel, provided clarification on the protocol and processes for the commission's request for specific focus at any hearing or comment opportunity.

The commission discussed its alternatives and options for gathering additional public comment. The commission discussed and DEQ staff confirmed that the commission could leave the public comment period open until Tuesday, Nov. 25, 2014.

O. Action item: Extension of MOU regarding CAFOs

Commissioner Eden noted a potential conflict of interest for this item and recused herself from the discussion and action. Beth Moore, water quality policy analyst, presented the item. She introduced Wym Matthews, Oregon Department of Agriculture, as her co-presenter. Moore provided background on the exiting memorandum of understanding regarding water quality permits related to confined animal feeding operations, known as CAFOs. Moore recommended that the commission approve a one-year extension to the existing memorandum of understanding, to expire Dec. 31, 2015, if approved. The commissioners asked clarifying and informational questions about the CAFO program and proposed one-year extension.

> Action: Authorize Director Pedersen to execute an agreement to extend the term of the current memorandum of understanding between DEQ and the Oregon Department of Agriculture related to the CAFO program for one year, until Dec. 31, 2015.
> Move: Commissioner Johnson
> Second: Vice-chair Armstrong

The commission unanimously approved the action, with the exception of Commissioner Eden who did not participate in this vote.

Vice-chair Armstrong introduced Stephanie Hallock, former DEQ director and current Board of Agriculture member, who addressed the commission to formally express interest for an EQC and Board of Agriculture liaison position. Director Pedersen provided additional background about liaison positions for the commissioners. The commission expressed support for the opportunity, and will make its decision after additional discussion among members and staff.

P. Informational item: Director's report

Director Pedersen presented written and verbal updates about DEQ, state and federal environmental activities of interest to the commission.

The written items included updates on:

- DEQ's role in Oregon's planning and response in the event of an Ebola-related emergency. Maggie Conley, hazardous waste specialist, provided additional information on this item.
- Harmful algae blooms in the Willamette River in September and October. Aaron Borisenko, lab manager, provided additional information on this item.
- Changes to federal rules and programs for the Clean Water Act State Revolving Fund for water quality infrastructure investments. Jennifer Wigal, water quality manager, provided additional information on this item.
- A request for concurrence with Director Pedersen's appointment of seven members to the reconvened Air Toxics Science Advisory Committee.

- The commissioners concurred with the appointments.
  - *Vice-chair moved the concurrence, Commissioner Johnson seconded it and the commission approved the action unanimously.*

Director Pedersen provided verbal updates in addition to the written report. Those updates included information about:

- DEQ's submittal this week of the 2012 Water Quality Integrated Report to EPA. He noted that DEQ expects EPA to disapprove some portions of the report. DEQ has requested additional resources from the 2015 Oregon Legislature specifically to work on its Integrated Report. Jennifer Wigal provided additional information for this item.
- Changes to the Oregon Legislature from this week's elections.
- The budget review and approvals process for DEQ.

Director Pedersen presented recognition of DEQ's staff for an award from ECOS for the innovative complaint intake and response system developed in 2013. He described the improvements in the intake system.

Commissioner Eden noted her formal and public recognition of Director Pedersen for his leadership as the president of ECOS in 2014.

Q. Action item: Update to filing authority delegation

Larry Knudsen, the commission's legal counsel, presented this item, which requested commission action to update delegated filing authorities related to rulemaking and other administrative functions due to staffing changes. Chair O'Keeffe thanked Maggie Vandehey, retiring as agency rules coordinator.

Action: Authorize Chair O'Keeffe to sign the rulemaking delegation withdrawal, as seen in attachment A, and authorize Chair O'Keeffe to sign an updated delegation of administrative functions, as seen in attachment B
Move: Vice-chair Armstrong
Second: Commissioner Johnson

The commission unanimously approved the action.

Chair O'Keeffe adjourned the commission's public meeting at 11 a.m.

Following the adjournment, the commission met for a working lunch and executive session. Staff from the Oregon Department of Justice presented updates about litigation, in-process and pending, during an executive session with the commission and some DEQ staff over a working lunch. This session was held pursuant to state meeting law and ended at approximately 12:30 p.m.

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Notes of a special meeting of the Oregon Environmental Quality Commission

Nov. 20, 2014
Portland, Oregon
DEQ's headquarters: 811 SW 6th Avenue

Thursday, November 20
Location: Room EQC-A, 10th floor, DEQ headquarters: 811 SW 6th Ave., Portland

Chair O'Keeffe convened the meeting at 1 p.m.

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

A. Informational and discussion item: Clean Fuels Phase 2

Director Pedersen provided an overview of the meeting's agenda and introduced the special meeting's content.

B. Informational and discussion item: Panel regarding Clean Fuels Phase 2 details

Cory-Ann Wind, DEQ air quality specialist, introduced this item. The first part of the item focused on California's low carbon fuel standards and program. The second part focused on overall program feasibility.

Jack Kitowski, California Air Resources Board, presented on the California program, its operation and its successes and challenges. Dr. Phillip Verleger, Western States Petroleum Association, presented information regarding the California program and general concerns about Oregon's program. The commissioners asked clarifying and informational questions about the material presented.

Chris DiPaolo, Boston Consulting Group, Mary Solecki, Environmental Entrepreneurs, and Jeffery Rosenfeld, ICF, presented information regarding the feasibility, in terms of cost, fuel quality and fuel quantity, of Oregon's Clean Fuels Program and low carbon fuel standard. The commissioners asked clarifying and informational questions after each presentation.

C. Public hearing: Clean Fuels Program Phase 2 rules

At 3:40 p.m., the commission opened a hearing for public comment on the proposed Phase 2 rules for the Clean Fuels program. Paul Garrahan, the commission's legal counsel, provided overview remarks and legal notices for the hearing. Comments were taken in the order they were received. Thirteen people submitted speakers' registration forms to present comment at the meeting. The summary notes below indicate the order in which comments were presented.

1. Shanna Brownstein, NW Natural, discussed the availability of alternative fuels.
2. Ross Macfarlane, Climate Solutions, noted support for the Oregon Clean Fuels Program and specified that the aviation sector strongly supports the standards with an opt-in provision for aviation fuels.
3. Todd Ellis, Imperium Renewables, provided an overview of the biofuels industry and expressed support for Oregon's Clean Fuels Program and standards.
4. Ian Thomson, Western Canada Biodiesl Association, discussed British Columbia's experience with a low carbon fuel standard.
5. Lisa Adatto, volunteer with the Oregon Environmental Council, discussed electric vehicles and noted support for Oregon's Clean Fuels Program.
6. Micah Berry, Chevron, noted the company's work to invest in alternative fuels and noted that the required new technology to support the low carbon fuel standard and Clean Fuels Program does not exist and is not likely to be successful.
7. Lauren Patton, Oregon Chapter of the American Planning Association, noted the organizations' support for the Oregon Clean Fuels Program.
8. Minhaj Ali Khan asked the commission to evaluate the issues more globally as it considers the Oregon Clean Fuels Program and low carbon fuel standards.
9. Jana Gastellum, Oregon Environmental Council, presented comments in support of the Oregon Clean Fuels Program and low carbon fuel standards.
10. Gavin Carpenter, SeQuential Biofuels, presented comments regarding used coconut oil biodiesel availability and in support of the Oregon Clean Fuels Program and low carbon fuel standards.
11. Caroline Silveira, DuPont, presented comments regarding DuPont's biofuels investments and development and expressed the company's support of Oregon's Clean Fuels Program.
12. Dale Feik, citizen, presented comments regarding overall carbon pollution concerns and asked the commission to support Governor Kitzhaber's energy and carbon goals for Oregon to reduce greenhouse gases.
13. Mary Solecki, Environmental Entrepreneurs, noted that a previous question about economic analysis has been studied and is expected to create new jobs and avoid damage from climate change from greenhouse gases.
14. Michael Vevera, Whole Energy Fuels, presented comments about project development and job creation. He noted California's success in spurring investment through its low carbon fuel standard and stated support for Oregon's Clean Fuels Program.

Chair O'Keeffe closed the hearing at 4:25 p.m. Following the close of the hearing, Director Pedersen provided information about next steps for the rulemaking process and the Oregon Clean Fuels Program. He thanked the panelists and commenters for their time and information today.

Chair O'Keeffe adjourned the meeting at 4:30 p.m.