

Minutes of the 382nd regular meeting of the Oregon Environmental Quality Commission

April 15-16, 2015

Portland, Oregon

DEQ's headquarters: 811 SW 6th Avenue
Conference room EQC-A on the 10th floor

Wednesday, April 15 – Noon to 4:30 p.m.

Lunch and executive session

The commission met from noon to 1:15 p.m. for a working lunch. 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.

Chair O'Keeffe convened the commission's regular meeting at approximately 1:15 p.m.

Present: Chair O'Keeffe, Vice-chair Armstrong, Commissioner Rider, Commissioner Johnson and Commissioner Eden (excused from the day's meeting after 1:45 p.m.)

A. Action item: Draft meeting minutes from Jan. 7-8 and Feb. 2, 2015, EQC meetings

The commission reviewed the draft meeting minutes from the Jan. 7-8 regular and Feb. 2, 2015, special EQC meetings.

Action: Approve the minutes as presented

Move: Vice-chair Armstrong

Second: Commissioner Eden

The commissioners unanimously approved the minutes as presented.

B. Informational item: Director's report

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

Before discussing the written report, Director Pedersen explained that he and Chair O'Keeffe attended an event this morning to receive a \$1.5 million grant from EPA for diesel engine retrofits and improvements. He noted that some photos and other notes from this morning's event are posted to DEQ's social media networks. Chair O'Keeffe thanked the staff who worked on the event and project.

The written information included updates about:

- The closure of the hazardous waste permit for the Umatilla Chemical Demilitarization Facility
- Air quality improvements in Klamath Falls

- Air quality concerns in and near Mill City
- Updates to the odor nuisance protocol
 - Commissioner Rider requested an update on the protocol's success after a few uses of the revised process, and Director Pedersen confirmed that DEQ will track the protocol and bring an update at a later meeting.
- The federal 111d Clean Air Act rules development
- A citizen request for Outstanding Resource Water designation for the North Fork Smith River
 - Larry Knudsen, the commissions' legal counsel, and Debra Sturdevant, DEQ Water Quality Program staff, provided additional clarification for this item in response to commission questions.
- Water quality trading policy development
- Discussions and potential delegation of some administrative rulemaking authorities, from the commission to the agency director or deputy director
- DEQ's issuance of the 401 Water Quality Certification for the proposed Coyote Island Terminal project
- Clean Fuels Program developments and updates
 - Director Pedersen presented Cory-Ann Wind with the parchment copy of the signed Clean Fuels bill and recognized her work for the program.
- The recent issuance of a statewide water quality toxics report compiling five years of water quality monitoring data
- Water Quality Permitting Program updates
- Information about Director Pedersen's recent visits to DEQ offices across the state
- A request for concurrence with proposed appointments to the Air Toxics Science Advisory Committee
 - Commissioner Johnson moved that the commission concur with the appointments as noted. Commissioner Rider seconded the motion and the commission unanimously approved the concurrence.

Following Director Pedersen's report, Commissioner Johnson noted that a staff member from the Oregon Health Authority is attending today's meeting. The commission welcomed Julie Early-Albers to discuss her role and the connections between DEQ and OHA as they pertain to public health and the environment. Commissioner Johnson asked about recent media coverage related to ALS and emissions from facilities in the Hillsboro area. Early-Albers discussed the process used by OHA for assessment of risk and disease rates and addressed the media interest in the facilities.

C. Action item: Adoption of federal rules in support of RCRA reauthorization

DEQ staff presented proposed hazardous waste rules for adoption. David Livengood, Hazardous Waste and Tanks Program manager, introduced the item and his co-presenters Rich Duval and Jeannette Acomb, hazardous waste specialists. Livengood provided background information about its hazardous waste program. Acomb described the proposed rules and explained that the proposed materials include two new federal hazardous waste requirements and updates to 10 amended federal hazardous waste rules in the Resource Conservation and Recovery Act.

The commission asked clarifying and informational questions about the information presented, and asked what portions of this proposed rulemaking would be considered administrative and potentially be delegated to the director if the commission chooses to pursue that option at a later date.

Action: Adopt the proposed rules in attachment A of this item as part of chapter 340 of the Oregon Administrative Rules and approve incorporating these rule amendments into the Oregon Resource Conservation and Recovery Act implementation plan to be effective when DEQ files them with the Secretary of State.

Move: Commissioner Johnson

Second: Commissioner Rider

The commission unanimously approved the motion.

D. Action item: Authorization to allow human consumption of recycled water

Ron Doughten, Water Quality Program manager, and Avis Newell, Water Quality Program specialist, presented a request for authorization to allow the use of recycled water as potable reused in limited circumstances. Newell explained that the commission must authorize the use in conjunction with approval from the Oregon Health Authority, which approved the use earlier this year. Newell described specific elements of the proposed authorization, explained the process used by DEQ to collect public comment on the proposal and described the next steps if the commission authorizes the request.

The commissioners asked clarifying and informational questions about the proposal. Vice-chair Armstrong asked DEQ to include this type of training for certified operators as the state considers enhanced reuse and recycling of wastewater. Bob Baumgartner, Clean Water Services, provided clarification in response to the commissioners' questions. Commissioner Rider noted that the media coverage of this item has highlighted the importance of innovative ways to reuse and recycle water and be a leader in the nation for viable water conservation.

Action: Move DEQ's recommendation and direct DEQ to draft an order, for Director Pedersen's signature, authorizing the requested use.

Move: Commissioner Johnson

Second: Vice-chair O'Keeffe

The commission unanimously approved the motion.

E. Action item: Contested case

Larry Knudsen, the commission's legal counsel, provided opening procedural and summary legal remarks for the item. Chair O'Keeffe polled the commissioners for ex parte contact and conflicts of interest and none were reported. Ward Greene presented M&G Collection's position for the matter. Sarah Wheeler and Susan Elworth presented DEQ's position for the matter. Each party presented opening remarks, a short rebuttal and then answered clarifying and informational questions from the commissioners.

Knudsen provided additional clarification in response questions from Commissioner Johnson regarding the determination of magnitude included in the Proposed and Final Order.

Action: Issue a final order adopting the Proposed and Final Order.

Move: Vice-chair Armstrong

Second: Chair O’Keeffe

Prior to a vote, the commission asked Knudsen for clarification of the options for action. After discussion, the commission voted on its motion as presented.

The commission did not approve the motion for a final order.

- In favor: O’Keeffe and Armstrong
- Opposed: Johnson and Rider
- Abstaining: None

Following the vote, Commissioner Rider asked Knudsen to further clarify the commission’s options for action. Commissioners discussed the clarification and their options for action.

Action: Remand the decision to Judge Gutman to reexamine the summary determination on the issue of magnitude based on the commission’s view that the facts alleged, including time spent, pumping of tanks and partial investigation done of the site, may be sufficient to determine that the violation for failure to comply with the 2011 violation is not a moderate magnitude.

Move: Commissioner Johnson

There was no commissioner to second the motion.

With a lack of three votes, the commission was unable to take any action on this item. The Proposed and Final Order will become final in the absence of commission action.

Chair O’Keeffe recessed the commission at approximately 4:15 p.m. until 8:30 a.m. on Thursday, April 16. On Wednesday evening, commissioners and some DEQ staff attended an informal, optional and self-pay social dinner in downtown Portland. Per state meeting law, no commission business was discussed at the dinner.

Thursday, April 16 – 8:30 a.m. to 4 p.m.

Chair O’Keeffe reconvened the meeting at 8:30 a.m.

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

F. Public forum

The commission reconvened at 8:30 a.m. for public forum.

Ten people submitted registration forms to present comment in Portland. People were also able to present comment by telephone from the Bend, Eugene and Medford DEQ offices.

1. Gordon Lyford presented a request to the commission in support of the North Fork Smith River being formally designated an Outstanding Resource Water. He asked the commission to make the designation a high priority for DEQ and Oregon, as California has done with its portion of the river. He also asked the commission to have DEQ engage with area residents on the issues to gather local knowledge and expertise. He provided a copy of his comments and supporting materials to the commissioners.
2. Mary Scurlock, Oregon Stream Protection Coalition, presented comments regarding the Oregon Department of Forestry's riparian rules. She provided a copy of her comments and supporting material to the commissioners. She asked the commission to help the Board of Forestry understand the scope and applicability of water quality standards related to these proposed rules.
3. Megan Hooker, American Whitewater, presented comments in support of the North Fork Smith River being formally designated an Outstanding Resource Water. She asked the commission to make this designation a high priority for DEQ's review and work closely with California on the review.
4. Daniel Serres presented comments regarding Oregon LNG, a liquefied natural gas terminal and pipeline in the Warrenton area. He thanked DEQ for holding two recent public meetings in Vernonia and Warrenton as part of its outreach process.
5. Steve Calhoun, Vernonia resident, presented comments regarding the Oregon LNG pipeline. He explained that the water quality and quantity issues in the Coast Range and Vernonia will be exacerbated by the Oregon LNG pipeline planned for the area.
6. Maggie Peyton presented comments regarding the Oregon LNG pipeline. She expressed concern about the planned path and potential damage if the pipeline breaks or an earthquake damages it.
7. David Moryc, American Rivers, presented comments in support of the North Fork Smith River being formally designated an Outstanding Resource Water. He echoed prior comments regarding the priority of DEQ's review and asked the commission and agency to work with the U.S. Forest Service on the protection of the river. He provided a copy of his testimony to the commissioners.
8. Dale Feik presented comments regarding air quality concerns and asked the commission to err on the side of caution and the precautionary principle when making decisions. He noted his research and involvement with ALS-related advocacy organizations in response to concerns about seemingly-elevated instances of ALS and similar health issues for Intel staff and neighboring residents. He provided a copy of his testimony to the commissioners.

9. Jackie Lang, Waste Management, presented an update on the status of Riverbend Landfill. She noted that the landfill is in compliance with its permits, and has been recently granted the approval from Yamhill County to expand its facility. She noted next steps for the landfill, including review and approvals required from DEQ. She extended an invitation to the commissioners to attend a tour of the facility and site at their convenience.

10. Wendy Koelfgen, Clean Energy Works, presented comments regarding a formal request from Clean Energy Works to present to the commission and discuss their work and ways to partner with DEQ and the commission.

G. Informational item: Budget and legislative updates

Greg Aldrich, Office of Policy and Analysis manager, presented updates on the 2015-17 agency budget process, state and federal budget information and state and federal legislative matters of interest to the commission. He described the budget development and review process, and the 2015-17 operating budget for DEQ based on updated information following the 2015 Legislative Session. Jim Roys, Financial Services Manager, noted that he intends to bring a financial update to the commission in June 2015, and that DEQ will be using a new metric to track and measure its operational financial health.

Aldrich explained that the 2015 Legislative Session has reached a deadline where bills must be scheduled for action by Tuesday, April 21, or will no longer be considered. He noted that the commission has received a weekly update of high-priority bills, and the deadline means that list is effectively halved as bills advance or are stopped. He noted several other deadlines for the legislative schedule before the end of session, tentatively scheduled for June 26. Aldrich reviewed the high-priority bills and the commissioners discussed the legislative information.

H. Informational item: Portland Harbor update

Nina DeConcini, Northwest Region Division administrator, introduced the item and provided background information about the Source Control Program. Keith Johnson, Cleanup Program manager, echoed DeConcini's comments about the success of the outreach materials to be shown today. Johnson described DEQ's role in the Portland Harbor cleanup work, the work done to-date for upland cleanup and the timeline for the collaborative work on the Portland Harbor Superfund site.

Alex Liverman, Portland Harbor Stormwater Program coordinator, described the development of the outreach campaign and video materials to be presented to the commissioners today. She noted that the video is intended to be shown by project partners, community groups and in other accessible formats for people interested in Portland Harbor and river-users who are at the greatest risk of exposure along the river.

The commissioners and audience watched the 40-minute video.

Following the video, the commissioners offered feedback and discussed the content and intended use of the materials. Director Pedersen and the commissioners thanked the staff who worked on the materials, and the program staff in general, and expressed their support for the video as an outreach and education tool.

I. Action item: Grants Pass carbon monoxide and particulate matter Limited Maintenance Plans

David Collier, Air Quality Permitting Program manager, presented proposed rules to update maintenance plans designed to protect air quality in Grants Pass for carbon monoxide and for fine particulate matter 10 microns and smaller, as required by federal law. Collier explained that Grants Pass is not currently at risk to violate the standards, and the proposed updates fulfill federal agreements for long-term compliance with air quality standards.

Action: Approve the two limited maintenance plans for Grants Pass, attachments A2 and A3, as part of chapter 340 of the Oregon Administrative Rules; adopt the proposed amendment to OAR 340-200-0040 in attachment A1 to incorporate the proposed rules into the Oregon Clean Air Act State Implementation Plan; and direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

Move: Commissioner Johnson

Second: Commissioner Eden

The commission unanimously approved the action

J. Action item: Air quality permitting program updates and revisions

Jeffrey Stocum, Air Quality Technical Services manager, introduced the item. Jill Inahara, Air Quality Program environmental engineer, provided an overview of the proposed rules and outlined the presentation for commission consideration and action. Inahara provided contextual and summary information about the proposed rules. George Davis, Air Quality Program environmental engineer, described the comments received for the proposed rules, and changes made by DEQ in response to the comments.

The commissioners asked clarifying and informational questions about the proposed rules, comments and revisions in response to comments and other detail in the proposed rule package.

Action: Adopt the proposed rules in attachments A1 through A4 as part of chapter 340 of the Oregon Administrative Rules with the corrections distributed as an addendum; find that certain rules adopted as attachments A1 through A4 are more strict than existing Lane Regional Air Protection Agency rules, as described in attachment B, and direct Lane Regional Air Protection Agency to implement such state rules until it adopts its own rules that are equivalent or more strict and submits them to the Environmental Quality Commission under ORS 468A.135; approve incorporating the rule amendments adopted as attachments A1 through A4 and the rule implementation directive to LRAPA described in attachment B into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040 (the “SIP revision”); and direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

Move: Commissioner Johnson

Second: Commissioner Rider

The commission unanimously approved the action.

Following the commission action, Inahara thanked the other staff who have worked on this rule packet and the commissioners noted their appreciation for the staff work to develop the rule revisions.

K. Action item: Federal air quality standards update and revisions

David Collier, Air Quality Planning Program manager, presented proposed revisions to certain air quality standards based on federal changes to categories within the National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards. Collier described the proposed rule revisions and provided background information about the federal NESHAP program and standards.

Action: Approve the state plan to implement new federal emission guidelines for commercial and industrial solid waste incineration units seen in attachment B; approve the request for delegation of the federal plan for hospital, medical, and infectious waste incinerators seen in attachment C; and direct DEQ to submit the state plan and delegation request to the U.S. Environmental Protection Agency for approval.

Move: Commissioner Eden

Second: Vice-chair Armstrong

The commission unanimously approved the action.

L. Informational item: Commissioner reports and agenda planning discussion

Commissioners provided verbal updates on their activities and other items of interest to the commission.

- Commissioner Rider described her work as the commission's representative to the Oregon Watershed Enhancement Board. OWEB is reviewing its funding priorities, with a timeline for October 2015 selection of funding projects for watershed enhancements. She discussed her ongoing involvement with the Oregon Outdoor Education Coalition, the Intertwine Alliance and recent conversations with EPA regarding a federal urban water initiative.
- Chair O'Keeffe noted that she was involved with the diesel grant ceremony this week and that she will be attending the Board of Agriculture meeting later this month in Salem.

- Vice-chair Armstrong explained that he will attend the Board of Forestry meeting this month to review recommendations regarding riparian rule proposals, which that board will consider for action in June. He noted that the planning for an October 2015 water issues summit continues, with a next meeting in June. He thanked Director Pedersen for his recent visits to DEQ offices across the state, and engaging with communities as part of those visits, and for DEQ's letter of support for HUD grant funding for community resiliency.
- Commissioner Eden noted that she will start her connection with the Land Conservation and Development Commission this spring, and asked that the commission schedule a special one-day meeting to focus on water quality assessment this summer.

Following the commissioner reports, the commission and staff discussed potential agenda topics for the June, and following, EQC meetings for 2015.

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

2015 EQC meeting dates

June 10-11: Regular meeting, Salem

August 12-13: Regular meeting, location TBD

October 14-15: Regular meeting, location TBD

November 5: Special joint meeting with the Board of Forestry, location TBD

December 9-10: Regular meeting, Portland