

Minutes of a special meeting of the Oregon Environmental Quality Commission

Jan. 24, 2014
Portland, Oregon
DEQ headquarters, 10th floor
811 SW 6th Ave., Portland

Friday, January 24 – 10:30-11:30 a.m.

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

Chair O’Keeffe convened the meeting at 10:30 a.m. and delegated the chair’s facilitation role to Vice-chair Armstrong for the duration of the meeting.

A. Action item: Proposed Clean Water State Revolving Fund rule revisions

Greg Aldrich, Water Quality Division administrator, introduced the item and provided a brief history of the program’s rules and reasoning for holding a special meeting for the proposal. Katie Foreman, Clean Water State Revolving Fund Program coordinator, presented the proposed rule revisions to allow public agencies to enter into a bond purchase agreement with DEQ with repayment terms up to 30 years, instead of the existing 20-year loans, for treatment works projects. She described the proposed rule revisions, DEQ’s outreach process through the development period and next steps if the rules are adopted by the commission.

The commission asked clarifying and informational questions about the proposal and rule revisions.

Motion: Adopt the proposed permanent rule amendments to OAR 340, Division 54, as seen in attachment A.

Move: Commissioner Johnson

Second: Chair O’Keeffe

The commission unanimously approved the motion as proposed.

Following the commission’s action, Director Pedersen noted that he recently met with EPA officials who commended Oregon’s Clean Water State Revolving Fund loan program for its good work. Chair O’Keeffe adjourned the meeting at 10:56 a.m.

2014 EQC meetings – tentative dates and locations

March 19-20: Portland
June 18-29: Location TBD
August 20-21: Location TBD
October 22-23: Location TBD
December 17-18: Portland

Draft minutes of the 376th regular meeting of the Oregon Environmental Quality Commission

Dec. 11-12, 2013
Portland, Oregon
DEQ headquarters, 10th floor, room EQC-A
811 SW 6th Ave., Portland

Please note: Some items were taken out of order due to scheduling needs.

Wednesday, December 11 – Regular meeting: 8:30 a.m. to 5 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

A. Action item: Review of draft minutes from Oct. 16-17, 2013, EQC meeting

The commission reviewed the recent meeting minutes.

Action: Approve the draft Oct. 16-17, 2013, meeting minutes as presented

Move: Vice-chair Armstrong

Second: Commissioner Johnson

The commission unanimously approved the Oct. 16-17, 2013, meeting minutes as presented.

B. Informational item: Budget and legislative updates

Director Pedersen provided an update about the upcoming short legislative session. He noted that DEQ is preparing for the 2015 Oregon Legislative session. Jim Roys, Financial Services manager, presented information about the 2013-15 operating budget. The commissioners asked clarifying and informational questions about the session and operating budget.

C. Action item: Certification of DEQ’s budget

Jim Roys, Financial Services manager, presented the 2013-15 Legislatively Adopted Budget for commission approval and certification. The commission must certify DEQ’s budget submittals. Roys summarized the budget information for the commission, which asked clarifying and informational questions about the budget structure. Commissioner Eden requested that future budget presentations use the same scale for charts and other figures.

Action: Authorize Chair O’Keeffe to sign and certify DEQ’s 2013-15 Legislatively Adopted Budget on behalf of the commission.

Move: Vice-chair Armstrong

Second: Commissioner Johnson

The commission unanimously approved the motion.

D. Action item: Updates to Division 11 and 12 rules

Leah Feldon, Office of Compliance and Enforcement manager, introduced the presenters, Les Carlough and Jenny Root. Feldon explained the information presented to the commission in preparation for this proposed action item. Root, environmental law specialist, described the proposed changes for Divisions 11, 12 and 200 of DEQ's Oregon Administrative Rules, which govern some of DEQ's administrative processes related to enforcement and compliance. Carlough, senior policy analyst, described specific changes to the spills penalty matrix. He noted that spills have their own penalty matrix due to the extreme environmental harm that can result from spills and these types of actions. The commission asked clarifying and informational questions about the proposed rules and enforcement rules in general.

Action: Adopt the proposed permanent rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules. Approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040

Move: Commissioner Johnson

Second: Vice-chair Armstrong

Commissioner Rider asked for clarification on how DEQ could enforce against a spill violation that affected multiple sensitive areas. Feldon and Carlough reviewed the proposed rules and noted that the rules would not specifically allow for multiple assessments if a spill affected multiple sensitive areas. Director Pedersen explained that other agencies are often involved with DEQ's enforcement actions in the case of major spills, and those agencies could exercise their own enforcement authority. Feldon clarified that DEQ also works closely with EPA on major spills, and EPA has much higher penalty thresholds.

The commission unanimously approved the rules as proposed.

This item was taken out of order

O. Action item: Onsite program rules

Greg Aldrich, Water Quality Division administrator, introduced the item and presenter, Randy Trox. Aldrich described the program in general, and the agency need for the proposed rules. Trox, Onsite Program coordinator, presented proposed rules to update the Onsite Septic System Program. He explained that the proposed rules would increase some program fees, clarify program language and make other adjustments for program improvement. Trox described the proposed rule changes. The commissioners asked clarifying and informational questions about the proposed rules and onsite program.

Action: Adopt the proposed permanent rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

Move: Commissioner Rider

Second: Commissioner Johnson

The commission unanimously approved the rules as proposed.

Following the commission's vote, Director Pedersen noted that DEQ has a requirement to report on Onsite program streamlining activities to the 2015 Oregon Legislature.

E. Informational item: Developing environmental solutions

Karen Williams, Kevin Downing, Alex Liverman and John Taylor presented an overview of the agency's new process to plan, prioritize and implement solutions to environmental problems. Williams explained that this presentation was recently given to all agency managers. She described the project background, its use at DEQ and the connections to the agency's outcome-based management system. Liverman described the decision-making processes embedded in the project, and outlined the parameters used for these kinds of decisions. Downing presented lessons learned, so far, and ongoing development as the new process is implemented at DEQ. Director Pedersen described the connections among the solutions process and the agency's reorganization and outcome-based management system. He noted that the commission often has ideas for potential work for DEQ, and this process is open to its use to develop innovative solutions to environmental projects.

Williams demonstrated the online idea registry webpage and some of the other project tools available to all staff. The commission asked questions about how the process works, the use of the idea registry and other elements of the project. Commissioners expressed an interest in an update, possibly through the established agency quarterly measure reviews, on the project's implementation and measured success.

Lunch and executive session

Commissioners, legal counsel and some DEQ staff met for a working lunch and executive session from approximately 11:45 a.m. to 1 p.m. The session was held pursuant to ORS 192.660(2) (h).

F. This item was removed from the agenda

G. Action item: Temporary rules for Clean Fuels program

David Collier, air quality manager, and Cory-Ann Wind, air quality planner, presented temporary proposed rules for the Oregon Clean Fuels Program. Wind described the proposed temporary rules as an update to phase one of the program. She noted that DEQ intends to propose permanent rules in June 2014.

Wind provided an overview of the Clean Fuels program, information about the import of fuels into Oregon, outreach and implementation of the program so far and detail on the proposed temporary rule updates. The commission asked clarifying and informational questions about the proposed temporary rules. At the commission's request, Director Pedersen provided clarification about the background for the program and its development schedule.

Following the staff presentation, the commission opened a specific public comment opportunity for the proposed temporary rules. No attendees presented comment on the proposed temporary rules and the commission closed the comment opportunity before taking action.

Action: Adopt the proposed temporary rule amendments in Attachment A as part of chapter 340 of the Oregon Administrative Rules to be effective Jan. 1, 2014; and adopt the justification for temporary rules in Attachment B.

Move: Commissioner Johnson

Second: Commissioner Rider

The commission unanimously approved the temporary rules as proposed.

H. Informational item: Updates to Oregon's Smoke Management Plan

David Collier, Air Quality Division manager, and Brian Finneran, Smoke Management Program coordinator, presented information about proposed updates to the Oregon Smoke Management Plan. Finneran explained that the Oregon Department of Forestry manages prescribed burning under the Oregon Smoke Management Plan and that changes to the plan require both Oregon Board of Forestry approval and EQC approval as a revision to the Oregon State Implementation Plan.

Finneran provided an overview of the Oregon Smoke Management Program, burning sources in Oregon and details of the program's success over the past 20 years. He explained that DEQ is seeking feedback from the commission on the proposed changes prior to moving ahead with rulemaking in 2014. Collier provided additional clarification about the proposed changes to special protection zones for the Medford and La Grande areas. The commission asked questions about the program and plan revisions.

I. Action item: Transportation control measure rules

Nina DeConcini, Northwest Region Division administrator, introduced this action item. She noted that the measure is to control carbon monoxide to protect public health in the Portland metropolitan area. Dave Nordberg, air quality planner, presented information about carbon monoxide trends in the Portland area and information about the control measure. He noted that the Portland area has met the standard for many years due to emission reduction requirements and other transportation controls.

Nordberg described the proposed rule revisions, DEQ's outreach and comments received about the proposed rules. The commission asked clarifying and informational questions about the proposed revisions.

Action: Adopt the proposed permanent rule amendments in Attachment A as part of chapter 340 of the Oregon Administrative Rules and approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040.

Move: Commissioner Johnson

Second: Commissioner Eden

The commission unanimously approved the rules as proposed.

J. Informational item: Hermiston Foods and odor concerns

Linda Hayes-Gorman, DEQ Eastern Region Division administrator, presented an overview of the item and noted that the item has a panel of co-presenters as an opportunity for the commission to hear information about work regarding odors from Hermiston Foods, a food processing plant in Hermiston.

Co-presenters included:

- Terry Rowan, Neila Wallace and Don Walchli, neighbors to the land application site
- Trent Waldern, General Manager, Hermiston Foods LLC
- Bill Burich, Vice President of Operations, Norpac Foods
- Mark Steele, Process/Environmental Engineer, Norpac Foods
- Don Hornek, Oregon State University Extension Agronomist
- Christine Kelly, Oregon State University Associate Dean of Academic and Student Affairs, College of Engineering
- David Farrer, Toxicologist, Oregon Health Authority

Each presenter had an opportunity to provide information to the commission. The commissioners asked clarifying and informational questions during each presentation.

Rowan, Wallace and Walchli discussed their experiences as neighbors to the Hermiston Foods land application site. They noted their concerns about odor, quality of life, property values and food safety concerns associated with the Hermiston Foods site. Walchli requested that the commission require a setback provision in the permit for Hermiston Foods as a food safety measure. He also recommended that the company use drip tape, not center pivot, irrigation to limit overspray onto adjacent properties.

Burich, Waldern and Steele presented information about Hermiston Foods and Norpac Foods. Waldern discussed the company's operations and use of water and land-applied wastewater. He noted that the average work season is 150 days of each year and described actions taken by the company to reduce odor issues.

Hornek, Kelly and Farrer discussed the scientific studies done of the site, and the findings from those odor and best management reviews. Kelly and Farrer noted that their studies were laboratory-based and not field studies, so the results are taken from field samples but not done at the Hermiston Foods land application site.

Chair O'Keeffe recessed the commission at 5 p.m. until 8:30 a.m. on Thursday, December 12. Commissioners and some DEQ staff attended an informal, optional and self-pay dinner on Wednesday evening. No commission business was held during dinner.

Thursday, December 12 – Regular meeting: 8:30 a.m. to 2:30 p.m.

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

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

L. Public forum

At 8:30 a.m., the commission opened public forum. People wishing to present comment were able to speak in-person in Portland or via conference phone from the Eugene, Medford and Pendleton DEQ offices.

Five people submitted registration forms to speak in Portland. No people presented comment by phone.

Chris Jarmer, Oregon Forest Industries Council, presented comment regarding water quality standards in forested lands. He requested that the commission direct DEQ to begin work on a new water quality standard for forest lands.

Russell Bassett, Northwest Steelheaders, presented comment regarding coal export terminals. He submitted a copy of his testimony for the commission. Bassett described his group’s concerns about proposed coal export terminals along the Columbia River and Oregon coast. He requested that the commission direct DEQ to do a 401 Water Quality Certification analysis and consider the sport fishers and other commercial water uses that rely on salmon and steelhead stocks during the analysis and permit evaluation.

Brett Vandenheuvel, Columbia Riverkeeper, presented comment regarding coal export terminals. He submitted a copy of his testimony for the commission. Vandenheuval requested that the commission direct DEQ to do a 401 Water Quality Certification for the coal export terminal proposed for Oregon at the Port of Morrow. He noted that the federal government has taken a narrow view of the project scope, so the state, and DEQ, has the authority to do the analysis.

Chair O’Keeffe asked the commission to suspend public forum at approximately 9 a.m. and take up item K, commissioner reports. She noted that there are two people who contacted DEQ this morning and plan to present comment who were delayed due to road conditions. The commission reopened the comment period at 9:10 a.m. to accommodate the additional comments.

4. Ed Gormley and Tony Meeker, Stewardship Committee for Riverbend Landfill, presented comments about Waste Management’s stewardship plan for Riverbend Landfill. Gormley provided background on the plan. Meeker discussed the role of the plan and committee, its current status and future plans for the area. They provided the commission with a map of the area for reference.

Chair O’Keeffe closed public forum at 9:25 a.m.

This item was taken out of order

K. Informational item: Commissioner reports

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

M. Informational item: Oregon's groundwater

Greg Pettit, DEQ's Laboratory and Environmental Assessment Division administrator, presented an overview of groundwater quality issues and protection activities in Oregon. He described the issues associated with groundwater protection and quality, its importance for Oregonians, health risks from groundwater contamination and ways DEQ's programs help protect Oregon's groundwater. Pettit discussed the Oregon Groundwater Protection Act, from 1989, and its collaborative multi-agency response to nonpoint source-based groundwater pollution and protection. Vice-chair Armstrong suggested that DEQ reach out to realtors in Oregon and offer classes or instruction about environmental issues, especially those required under disclosures for real estate transactions, as part of the ongoing training requirements for licensed realtors.

N. Informational item: Water quality monitoring summit

Greg Pettit, lab administrator, introduced the item and noted that the scientific and technical work of the lab forms the foundation of good policy and regulatory requirements at DEQ. Aaron Borisenko, lab manager, shared the results of a recent water quality monitoring summit and described the agency's work to build professional networks to share information among state, federal, local and tribal governments and environmental organizations in Oregon. He discussed the goals and work of the summit, using enterprise monitoring as a way to reduce costs and improve outcomes for water quality, feedback from participants about the summit and opportunities for future summits and collaborative work. Director Pedersen noted that DEQ is working with other state agencies on an enterprise monitoring approach to allow better collection, use and distribution of environmental data.

P. Action item: Low- and zero-emission vehicle rules

David Collier, Air Quality Division manager, introduced the item. Dave Nordberg, air quality planner, presented proposed rules to update the Oregon Low and Zero Emission Vehicles Program. Oregon is an opt-in state to the California low-emission vehicle program, which has more stringent requirements than the federal requirements. Vehicle manufacturers must provide vehicles in California and the other 13 opt-in states with much lower emissions and higher gas mileage than conventional vehicles. The proposed rules would maintain the alignment of Oregon's rules and program with California's program, a required element of the opt-in process. Nordberg discussed the development process for the proposed rules and opportunities for Oregonians to use more low- and zero-emission vehicles due to infrastructure investments and consumer behavior in the state.

Action: Adopt the proposed permanent rule amendments in Div 257 as a part of chapter 340 of the Oregon Administrative Rules.

Move: Commissioner Rider

Second: Commissioner Johnson

The commission unanimously approved the rules as proposed.

Lunch

Commissioners recessed for lunch from approximately 11:45 a.m. to 12:30 p.m. Commissioner Rider left the meeting following lunch.

Q. Action item: Water quality toxics criteria revisions

Debra Sturdevant, Water Quality Division Standards manager, introduced the item and presenter, Andrea Matzke. Matzke, water quality standards specialist, presented proposed rules to update the Water Quality Division toxics standards. She noted that the proposed revisions would correct and clarify the standards, previously adopted by the commission in 2004 and disapproved by EPA in 2013. Matzke explained that the proposed revisions are corrections and not substantive changes. DEQ intends to propose additional rule changes in 2014 to address the substantive elements of the EPA disapprovals.

The commission asked clarifying and informational questions about the proposed rules.

Action: Adopt the proposed permanent rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

Move: Vice-chair Armstrong

Second: Commissioner Johnson

The commission unanimously approved the rules as proposed.

R. Informational item: Director's dialogue

Director Pedersen presented updates on DEQ activities and projects of interest to the commission. Prior to presenting the items noted in the item's written report, he asked Jennifer Wigal, Water Quality Division deputy administrator, to discuss the proposed turbidity standards rulemaking recently restarted. He discussed items from the item's written report, including:

- EPA action on DEQ's standards revision for the West Main Canal in Hermiston
- Planned rule updates for the Lane Regional Air Protection Authority, which the commission must adopt as part of the Oregon State Implementation Plan
- The 2012 report about materials recovery and disposal rates, including the best recovery rate, of 53.4 percent, in over 20 years. Peter Spendelow, Materials Management Program specialist, provided additional detail on this item.
- A new permit surcharge for suction dredge mining permits
- DEQ's role in a massive emergency response and cleanup action in response to a crash and chemical spill in eastern Oregon
- Chemical cleanups at high school labs across the state
- Permit development for a proposed Intel facility in Hillsboro
- A request for reconsideration of a permit DEQ issued to the Daimler facility on Swan Island in north Portland. DEQ granted the request, reviewed the permit information and confirmed its issuance following the review
- Final staff training and implementation of the agency's new nuisance complaint strategy and response

- Draft permits under development for a proposed liquefied natural gas terminal near Astoria
- Stormwater concerns at an auto recycling facility in northeast Portland
- Ongoing sewer infrastructure needs for the Gardiner Sanitary District
- Multi-state efforts and agreements to promote electric vehicle use and infrastructure investments to build public charging stations for electric vehicles. Oregon launched an interagency team, which includes DEQ, to work on this initiative
- A pact among west coast state governors and British Columbia's premier for coordinated climate actions

In addition to the written report, Director Pedersen updated the commission about:

- His work as president of the Environmental Council of States
- A recent visit to La Pine to discuss groundwater concerns in the area, and actions DEQ will advance as recommended from the groundwater project steering committee
- DEQ's fundraising and that the agency raised the greatest amount of money of any state agency for the annual charitable fund drive

S. Informational item: Organizational structure updates

Director Pedersen discussed organizational structure changes at DEQ, made in late 2013 and to be implemented Feb. 1, 2014, in alignment with the agency's outcome-based management system. The commission asked questions about the implementation of the structure, staff reactions, budget implications of the reorganization and other details. They also discussed alignment between the commission's structure and the DEQ structure as an agency, and if EQC's operations should adapt as the agency structure changes.

Vice-chair Armstrong requested that the commission hold a half-day session in March 2014, as part of the next meeting, to evaluate how it can connect with and support the agency structure and reorganization. Commissioner Johnson voiced her support for EQC work sessions as a regular meeting feature. Chair O'Keeffe and Vice-chair Armstrong will plan the initial work session as part of the March 2014 meeting.

Chair O'Keeffe adjourned the meeting at 2:30 p.m.

2014 EQC meetings – *tentative dates and locations*

March 19-20: Portland
June 18-29: Location TBD
August 20-21: Location TBD
October 22-23: Location TBD
December 17-18: Portland