

Minutes of the three hundred and seventy-first regular meeting of the Oregon Environmental Quality Commission

Dec. 6-7, 2012
DEQ's headquarters, 10th floor, room EQC-A
811 SW 6th Avenue
Portland, Oregon

Please note: Meeting minutes are not final until approved by the commission.

Thursday, December 6 – Regular meeting: 8:30 a.m. to 5 p.m.

Chair Blosser convened the meeting at 8:30 a.m.

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

At the start of the meeting, Chair Blosser introduced Colleen Johnson, a prospective new commissioner who attended the meeting as an audience member.

A. Action item: Minutes from the Oct. 25-26, 2012, EQC meeting

The commissioners reviewed the draft minutes from the Oct. 25-26, 2012, EQC meeting. The commission identified one typographical error, and corrected that error on the first page, under item B.

Action: Approve the minutes as corrected.

Move: Vice-chair O'Keeffe

Second: Commissioner Armstrong

The commission unanimously approved the Oct. 25-26, 2012, EQC meeting minutes with one correction.

B. Action item: DEQ's 2050 Vision for Materials Management

Wendy Wiles, DEQ Land Quality Division administrator, introduced the item. She thanked the division staff, and partners who have worked on this long-term vision for materials management in Oregon. Loretta Pickerell, Solid Waste Program manager, presented an overview of the proposed materials management document. She noted that the proposed 2050 Vision for Materials Management will replace the state-mandated solid waste management plan, which did not assess the full lifecycle of materials.

David Allaway, Land Quality Division policy analyst, discussed the concept of lifecycle management of materials, and why DEQ chose to use this approach. Abby Boudouris, project manager and solid waste policy analyst, discussed the process DEQ used to develop its 2050 Vision. Boudouris thanked the staff and external partners who participated in the materials management workgroup. Boudouris presented highlights in the 2050 Vision report, and discussed the themes present in the document. Allaway explained elements of the pathways DEQ identified as ways it can achieve the materials management goals outlined in the 2050 Vision. Boudouris described the public outreach processes DEQ used to distribute information and collect feedback on the proposed 2050 Vision.

The commission asked clarifying and informational questions and provided feedback regarding the proposed 2050 Vision.

Action: Adopt Materials Management in Oregon: 2050 Vision and Framework for Action to update Oregon's State Integrated Resource and Solid Waste Management Plan

Move: Commissioner Rider

Second: Commissioner Armstrong

The commission unanimously approved the motion.

Following the commission's approval of the 2050 Vision, Director Pedersen responded to specific points and questions the commissioners raised. He thanked the DEQ staff and external partners who worked on this project and plan.

C. Informational item: Update on DEQ's Toxics Reduction Strategy

Wendy Wiles, DEQ Land Quality Division administrator, introduced the item and explained the process for the presentation. Kevin Masterson, agency toxics coordinator, discussed DEQ's five short-term priority actions and recent implementation successes. A panel of external partners discussed their work with the DEQ toxics reduction strategy over the past year.

Gabriela Goldfarb, Governor's Natural Resource office, Roger McFadden, Staples, Ron Brown, Earl Brown & Sons, and Mary Halbleib, OSU Integrated Plant Protection Center, introduced themselves and discussed the way their organizations interact with DEQ for toxics reduction in Oregon.

- Goldfarb explained that her work for the state includes a number of environmental concerns, and presented information about Governor Kitzhaber's executive order on green chemistry. She noted that the order allows a collection of state agencies to meet and discuss ways to develop capacity for the use of green chemistry and safer chemicals.
- McFadden explained that he, as a native Oregonian, is committed both personally and professionally to remove toxins from the supply chains and products offered by Staples. He thanked the commission for its time today, and its work for toxics reduction. McFadden described the work Staples has done to improve its supply chain and products offered, and explained that small businesses are critical to the success of the state's work to reduce toxins in consumer products.
- Brown, president and CEO of a fruit growing company in Milton-Freewater, noted that his company has been operating for 35 years and has been very active in the discussions about legacy pesticides in agricultural use. He described the partnerships among growers in Milton-Freewater and the state, and described the successes in quantifiably reducing toxins in Oregon's environment. He noted that the partnerships have also strengthened his company's market opportunities due to its compliance with and certification by the Global Good Agricultural Practices organization.
- Halbleib discussed her role to help provide information to producers across the state related to integrated pest management and reduction of pesticides in Oregon's water. She explained that OSU has been working closely with DEQ since 2006 on pesticide-reduction efforts, and presented information about the outcomes of that work.

D. Action item: Contested case hearing

Larry Knudsen, the commission's legal counsel, provided an introduction and legal process information for this item concerning a contested case involving the Burns-Johanson Oil Company. Knudsen polled the commissioners for any conflicts of interest or ex-parte contact, and none were reported.

Allan Bakalian, representing the Burns-Johnson Oil Company, presented the company's position for the matter. Leah Koss, DEQ Office of Compliance and Enforcement manager, and Susan Elworth, DEQ environmental law specialist, presented DEQ's position. Bakalian and Elworth each presented clarifying information about their respective positions.

Action: Issue a final order adopting Judge Whitaker's Proposed and Final Order in its entirety.

Move: Vice-chair O'Keeffe

Second: Commissioner Armstrong

The commission approved the motion, with four commissioners in support and one abstaining.

In favor: Chair Blosser, Vice-chair O'Keeffe, Commissioner Rider and Commissioner Armstrong

Opposing: None

Abstaining: Commissioner Uherbelau

Lunch and executive session

Chair Blosser recessed the commission from 12:40 to 1:30 p.m. for lunch and executive session. Commissioners and some DEQ staff met with Oregon Department of Justice staff over a working lunch in an executive session. The session was held pursuant to ORS 192.660(2) (h).

E. Action item: Proposed revisions to Clean Water State Revolving Fund loan program rules

Greg Aldrich, DEQ Water Quality Division administrator, introduced the item. Judy Johndohl, Water Quality Division manager, described the program and the proposed rules. She explained that the proposed rules would improve the program's ability to provide financial assistance to public agencies that have diverse water quality improvement project needs, provide clarity about the loan program's funding process and ensure long-term longevity of the revolving fund. The commissioners asked clarifying and informational questions about the proposed rules and program.

Action: Adopt the proposed amendments to Oregon Administrative Rules Chapter 340, Division 54

Move: Commissioner Armstrong

Second: Commissioner Rider

The commission approved the motion, with four members in support and one abstaining.

In favor: Chair Blosser, Vice-chair O'Keeffe, Commissioner Rider and Commissioner Armstrong

Opposing: None

Abstaining: Commissioner Uherbelau

F. Action item: Proposed revisions to the Operator Certification program rules

Nina DeConcini, DEQ Northwest Region Division administrator, provided opening remarks on this item. She recognized Greg Geist, Northwest Region Water Quality Division manager, for his work, and noted that he will be leaving DEQ at the end of 2012 after 13 years of service. Geist introduced the item and noted that DEQ is requesting a substantial fee increase for the program. Genet Belete, Water Quality specialist, presented the proposed rules and fee increase. The commissioners asked clarifying and informational questions about the proposed revisions.

Action: Adopt proposed rule amendments to OAR 340-049, regulations related to certification of wastewater system operator personnel.

Move: Vice-chair O'Keeffe

Second: Commissioner Uherbelau

The commission unanimously approved the motion.

G. Action item: Proposed revisions to Title V permit fee rules

Andy Ginsburg, DEQ Air Quality Division administrator, introduced the item. Esther Westbrook, DEQ policy analyst and environmental law specialist, presented the proposed rules. She explained that the proposed rules would increase program fees by 2.6 percent, equal to the 2012 change of the consumer price index. She noted that the Title V permit program is fee-funded, and the proposed increase reflects the agency costs associated with operating the program. The commissioners asked clarifying questions about the proposed revisions.

Action: Determine that increasing Title V operating permit fees by the 2.6 percent change in the consumer price index is necessary to cover the reasonable indirect and direct costs of implementing Oregon's Title V operating permit program, and adopt the proposed amendments to Oregon Administrative Rules Chapter 340, Division 220.

Move: Commissioner Armstrong

Second: Vice-chair O'Keeffe

The commission unanimously approved the motion.

H. Action item: Klamath Falls air quality attainment plan

Andy Ginsburg, Air Quality Division administrator, introduced the item and explained that this and the next item both request commission action related to air quality attainment in Oregon communities. Rachel Sakata, Air Quality Division planner, presented background information about monitoring and emission concerns in Klamath Falls. She noted that DEQ worked with Klamath County to appoint an advisory committee, which developed a number of recommendations and actions for air quality improvements. Sakata explained that the plan and associated rules are designed to bring the area into compliance with National Ambient Air Quality Standards for fine particulate, PM_{2.5}, by the December 2014 federal deadline.

Larry Calkins, Air Quality Division nonattainment area coordinator, described contingency measures included in the proposed attainment plan. Calkins also described the public outreach process DEQ used to inform area residents about the proposed plan and solicit feedback to improve the final proposed attainment plan. The commission asked clarifying questions about the proposed rules and attainment plan. Vice-chair O'Keeffe thanked the Klamath County commissioners who are working to implement air quality solutions for the county.

Action: Adopt the proposed rule amendments, approve Klamath Falls PM_{2.5} Attainment Plan and direct DEQ to submit the Klamath Falls PM_{2.5} Attainment Plan to EPA as revisions to Oregon's Clean Air Act State Implementation Plan.

Move: Commissioner Rider

Second: Commissioner Uherbelau

The commission unanimously approved the motion.

I. Action item: Oakridge-Westfir air quality attainment plan

Andy Ginsburg, DEQ Air Quality Division administrator, introduced the item and provided background information on the local and state air quality authorities in Oregon. He explained that plan was approved by the

Lane Regional Air Protection Authority, and must be approved by the commission before being submitted to EPA as part of the Clean Air Act State Implementation Plan. Merlyn Hough, LRAPA director, presented information about the Oakridge-Westfir area and its air quality attainment concerns. He discussed the development and public outreach process for the attainment plan, and described the proposed next steps. Hough thanked the staff and partners who developed the plan.

Action: Adopt the proposed rule amendments, approve the Oakridge-Westfir PM_{2.5} Attainment Plan and direct DEQ to submit the Oakridge-Westfir PM_{2.5} Attainment Plan to the Environmental Protection Agency as a revision to the Oregon Clean Air Act State Implementation Plan.

Move: Vice-chair O’Keeffe

Second: Commissioner Armstrong

The commission unanimously approved the motion.

This item was taken out of order

K. Informational item: Director’s dialogue

Director Pedersen presented one item from the written report for this brief timeframe. With assistance from Merlyn Hough, Lane Regional Air Protection Authority director, Director Pedersen related Lane County Commission’s discussion of evaluating continuing operations and funding for LRAPA. At that meeting, DEQ provided information about its services and role, and supported the continued work of LRAPA as the local authority.

Chair Blosser recessed the commission at 4:45 p.m. until 8:30 a.m. on Friday, Dec. 7, 2012.

Commissioners and some DEQ staff attended an informal, optional and self-pay dinner in downtown Portland on Thursday evening. No commission business was held during dinner. Public meeting law requires notice of this dinner.

Friday, December 7 – Regular meeting: 8:30 a.m. to 4 p.m.

Chair Blosser convened the meeting at 8:30 a.m.

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

J. Public forum

At 8:30 a.m., the commission opened public forum. People wishing to present comment were able to do so in-person in Portland or by telephone at the Eugene, Medford and Pendleton DEQ offices. No people submitted request-to-speak forms in Eugene, Medford or Pendleton. Six people submitted request-to-speak forms in Portland.

1. Dennis Linthicum, Klamath County Commissioner, presented information about the Klamath County air quality attainment plan and concerns. He requested that the commission take action to exclude certain bad air events from reporting data, as these events should be considered exceptional or extraordinary events not subject to the monitoring requirements and could otherwise force Klamath Falls into nonattainment status.
2. Ilsa Perse, Carlton resident and member of Stop the Dump coalition, presented information and submitted materials regarding Riverbend Landfill. Perse expressed concern about the failure of a

proposed earthen berm following an earthquake, and asked the commission to influence proactive legislation to prepare for earthquakes and other catastrophic natural events.

3. Richard McJunkin, Stop the Dump coalition, presented information and submitted materials regarding Riverbend Landfill. He explained that the design standards for the Riverbend Landfill and its proposed mechanically-stabilized earthen berm are inadequate to sustain the effects of an expected earthquake. He noted that the model used at Riverbend Landfill is incorrect and underestimates the potential damage.
4. Leonard Rydell, Stop the Dump coalition, presented information and submitted materials regarding Riverbend Landfill. He discussed concerns about proposed mining in the floodway and floodplain near Riverbend Landfill, an earthquake analysis, alleged violations of zoning standards and high groundwater and leachate.
5. Ramsey McPhillips, McPhillips Farms, presented information regarding Riverbend Landfill. He requested that the commission issue a moratorium on expansion or work at Riverbend Landfill because of its placement and dangers from geographic vulnerabilities.
6. Susan Meridith, Stop the Dump coalition, submitted a form to speak regarding Riverbend Landfill, but ceded her comments in the interest of time. She noted that she will submit information electronically.

This item was continued from Thursday, Dec. 6, 2012

K. Informational item: Director's dialogue

Director Pedersen presented written and verbal updates on DEQ activities and projects of interest to the commission. The written updates included information about:

- Agricultural pesticide collection events
- The kick-off meeting of the statewide Total Maximum Daily Loads Advisory Committee
- The process for pre-application work on a proposed gold mine claim known as Grassy Mountain, near Vale
- DEQ's role in a potential permit process for liquefied natural gas projects in Oregon
- Community concerns about odors and air emissions from a truck painting facility in north Portland that is undergoing review by DEQ for a permit renewal
- The installation and successful use of EQC-mandated pollution control technologies at the coal-fired power plant in Boardman
- DEQ's role in the review process for proposed coal transport projects in Oregon
 - Director Pedersen noted that DEQ held three community meetings this week to present information and solicit questions about the coal projects. At these three meetings, one held in Boardman, one in Clatskanie and one in Portland, DEQ reached over 1000 Oregonians. In Portland, over 800 people attended the meeting and it was likely the largest public meeting DEQ has held. Director Pedersen complimented and thanked the technical and policy staff who fielded questions and the communications team for facilitating the meeting process.
 - Linda Hayes-Gorman, DEQ Eastern Region Division administrator, presented additional information about the permitting process. Joanie Stevens-Schwenger, DEQ Office of Communications and Outreach, explained that she is collecting data and feedback through a standard survey tool at all public meetings – including the coal meetings.
- The one-year anniversary of DEQ's new complaints intake and response system.
- Director Pedersen noted that the director's dialogue will be issued as a monthly report starting in January 2013, as part of the revised commission schedule.

L. Action item: DEQ's 2013 rules agenda

Joanie Stevens-Schwenger, DEQ Office of Communications and Outreach manager, presented the 2013 rules agenda and proposed rulemaking schedule for DEQ. The commissioners were asked to select their desired level of involvement for each of the 26 proposed rules that DEQ may develop in 2013. The commissioners discussed

their recommended and requested levels of involvement with the proposed rules, and staff members provided clarifying information about the rules.

This item was taken out of order

P. Informational item: Commissioner reports

Commissioners presented verbal updates on their activities and projects of interest and relevancy to the commission. Commissioner Armstrong noted that, as mentioned during director's dialogue, he is participating in the statewide TMDL Advisory Committee. He explained that he met with a Board of Forestry member to discuss connections between the two organizations, and will be bringing information to an EQC meeting in the coming months.

This item was taken out of order

O. Informational item: Budget and legislative updates

Jim Roys, DEQ Financial Services manager, presented an update on the Governor's Balanced Budget, modifications to DEQ's operating and affordable budget and other budget information for the 2013-15 biennium. Roys described the next steps for DEQ and the state for the 2013-15 budget development process. Roys noted that DEQ did sell bonds this fall, as authorized by the commission at the last meeting, and described the specific conditions of those bond sales. Director Pedersen explained that he and Palmer Mason, DEQ's government relations manager, will be present in Salem on a daily basis starting in January, and will be providing regular updates about budget and legislative items through the 2013 Oregon Legislative Session.

M. Informational item: Celebration of Commissioner Uherbelau's service

Joni Hammond, DEQ Deputy director, and Joanie Stevens-Schwenger, DEQ Office of Communication and Outreach manager, presented this item. DEQ staff and the commission gathered to celebrate the service of Commissioner Uherbelau. December 2012 was her last scheduled meeting, and she has served on EQC since March 2005.

Lunch and executive session

Chair Blosser adjourned the commission for lunch and an executive session at approximately 12:15 to 1:30 p.m. Commissioners met over a working lunch in an executive session to conduct the annual review for DEQ's Director Dick Pedersen. The session was held pursuant to ORS 192.660(2) (i).

N. Action item: Oregon Clean Fuels program rules

Andy Ginsburg, DEQ Air Quality Division administrator, introduced the item. Cory-Ann Wind, Air Quality Division planner, presented program information and described the public process DEQ used to develop and solicit feedback on the proposed rules. Wind described the proposed rules, and explained that the proposed materials for commission action are only the first phase of the program. She noted that if phase one is adopted, and the Legislature lifts the sunset on the authorizing legislation this year, DEQ would only then develop a second phase of program rules for commission action in 2013-14.

Wind described the proposed next steps and implementation plan for the Oregon Clean Fuels Program. The commissioners asked clarifying and informational questions about the proposed rules and program. Wind noted and corrected a typographical error in the staff report. The proposed rule language did not contain this error, and the correction does not affect the recommendation for adoption or the actual rule language.

Action: Adopt the proposed rules for the Oregon Clean Fuels Program.

Move: Commissioner Uherbelau

Second: Commissioner Armstrong

Draft x

Approved as presented

Approved with amendments

The commission approved the motion, with four commissioners in favor and one opposed.

In favor: Chair Blosser, Commissioner Uherbelau, Commissioner Armstrong and
Commissioner Rider

Opposing: Vice-chair O'Keeffe

Abstaining: None

Following the commission's action, Director Pedersen presented comment about the Oregon Clean Fuels Program. He noted that DEQ will bring reports and updates on the program to the commission through phase one and any other legislative developments.

Chair Blosser adjourned the meeting at approximately 3 p.m.

Special meeting

Jan. 22, 2013, 1 p.m.

This meeting will have two items; one for the commission action regarding a petition requesting revisions to onsite wastewater treatment system rules. The second item is an informational item and update on regulatory activities regarding Riverbend Landfill in Yamhill County. People who wish to attend the meeting may do so at the Portland (headquarters) or Bend DEQ offices. Most commissioners will be connecting to the meeting by telephone conference call.

2013 EQC meetings

March 20-21, 2013: Portland

June 19-20, 2013: Location TBD

Aug. 21-22, 2013: Location TBD

Oct. 16-17, 2013: Location TBD

Dec. 11-12, 2013: Portland

Minutes of a special meeting of the Oregon Environmental Quality Commission

Jan. 22, 2013

Two locations:

DEQ's headquarters, 811 SW 6th Avenue, Portland - 10th floor, room EQC-A
DEQ's Bend office: 475 NE Bellevue Drive, Bend – Main conference room

Tuesday, January 22 – Special meeting: 1 to 3 p.m.

Chair Blosser convened the meeting at 1 p.m.

Present: Chair Blosser, Vice-chair O'Keefe (by phone), Commissioner Rider,
Commissioner Armstrong (by phone) and Commissioner Johnson

A. Action item: Petition for rulemaking

Commissioners took action on a petition submitted Oct. 26, 2012. By law, the commission must take action on any petition within 90 days of its submittal.

Larry Knudsen, the commission's legal counsel, provided an overview of the commission's legal role and responsibilities related to this petition. Ellen Currie, Deschutes County Citizens Action Group president, presented the position of the petitioners. John Huddle and Judy Forsythe, co-petitioners, presented additional information. Currie, Forsythe and Huddle connected via phone from the Bend DEQ office. Mike Kucinski, DEQ Onsite Wastewater Treatment System program manager, presented DEQ's position. Kucinski connected via phone from the Eugene DEQ office, and noted that Bill Mason, DEQ's senior hydrogeologist, was also present in the Eugene office for any questions.

Following the presentations, commissioners asked clarifying and informational questions about the petition and the commission's legal process for petitions.

Action: Deny the petition to initiate rulemaking and direct DEQ's Onsite program staff to:

1. Continue working with the South Deschutes and Northern Klamath Counties Groundwater Protection Project Steering Committee to finalize recommendations to DEQ.
2. Evaluate the feasibility of a Geographic Area of Special Consideration as authorized by ORS 454.615(1) for a area in and near La Pine, and report back to the commission.

Moved: Commissioner Johnson

Second: Commissioner Armstrong

Commissioner Rider encouraged DEQ to assess if other areas of the state could be reconsidered as a comprehensive review of the statewide onsite program. Director Pedersen noted that the La Pine area is prepared to be an area of special concern due to the community's engagement and

commitment to successful environmental regulations for onsite systems. He also noted that resources expended in the La Pine area would be well-leveraged due to the work already done by DEQ and others to identify known limits and opportunities of the area.

The commission unanimously approved the motion with five commissioners in support.

B. Informational item: Key issues at Riverbend Landfill

Director Pedersen introduced the item and noted that the commission requested this follow-up information following public comment from a coalition of people opposed to Riverbend Landfill. Lissa Druback, Eastern Region Solid Waste program manager, introduced the item and presented background information about the project and site. Bob Schwarz, Solid Waste program staff, presented specific project information. He noted that the proposed permit change, a mechanically stabilized earthen berm, would be the first of its kind in Oregon.

Schwarz discussed the seismic analysis done by several consultants related to the permit application for this type of berm, and the elements that go into a seismic analysis. Druback explained that DEQ received a letter Jan. 16, 2013, from DOGAMI regarding the seismic magnitude used in DEQ's decision-making processes. She noted that the letter, which recommended using magnitude 9.0 instead of 8.5, means that DEQ will need to conduct additional research on how that recommended change could affect permit decisions for Riverbend Landfill and all seismic analyses done by and for DEQ. Schwarz and Druback presented information about liquefaction, floodplain maps and flood-sensitive locations near Riverbend Landfill, soil excavation at and near the landfill, potential river migration due to major excavation at the landfill, nuisance odors and potential devaluation of properties near the landfill.

Following the staff presentation, the commissioners asked clarifying and informational questions. Druback noted that DEQ intends to meet with DOGAMI within the next month, to help identify a path forward for DEQ and its decisions related to landfills across the state. She noted that DEQ will inform the commission about conversations with DOGAMI and any resultant permit decisions, since the next regular commission meeting is not until March 2013.

At Chair Blosser's request, Director Pedersen provided a short update about activities at DEQ. Director Pedersen discussed the upcoming 2013 Oregon Legislative Session and the agency's progress developing its outcome-based management system. He noted that Commissioner Armstrong will bring an informational item to the March 2013 EQC meeting regarding opportunities for the commission to work more closely with the Board of Forestry.

Chair Blosser adjourned the meeting at 2:45 p.m.

2013 EQC meetings

March 20-21, 2013: Portland
June 19-20, 2013: Location TBD
Aug. 21-22, 2013: Location TBD
Oct. 16-17, 2013: Location TBD
Dec. 11-12, 2013: Portland