

Minutes of the 374th regular meeting of the Oregon Environmental Quality Commission

Aug. 21-22, 2013
La Grande, Oregon
Eastern Oregon University

Wednesday, August 21 – Regular meeting: 1 to 5 p.m.

Prior to the start of the meeting, commissioners and some DEQ staff toured the Tri-County Hazardous Waste Center, a household hazardous waste facility in La Grande. The tour was informational and no commission business was conducted during the tour.

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

Vice-chair O’Keeffe convened the meeting at 1 p.m.

A. Action item: Minutes from the June 19-20, 2013, regular EQC meeting

Commissioners reviewed the draft meeting minutes from the June 19-20, 2013, EQC meeting.

Action: Approve the June 19-20, 2013, EQC meeting minutes as presented.

Move: Commissioner Armstrong

Second: Vice-chair O’Keeffe

The commission approved the June 19-20, 2013, EQC meeting minutes as presented with three commissioners in support and one abstaining.

- **In support:** Vice-chair O’Keeffe, Commissioner Armstrong and Commissioner Rider
- **Abstaining:** Commissioner Johnson

B. Informational item: Welcome and introductions to La Grande and Eastern Oregon University

La Grande Mayor Pokorney and Eastern Oregon University Provost Adkison welcomed the commission to the city and university. Provost Adkison described the successful internship program at EOU placing students in rural communities to help work on community issues.

C. Informational item: Northeastern Oregon Regional Solutions Team

Scott Fairley, Northeastern Oregon Regional Solutions Center coordinator, Randy Jones, DEQ’s Regional Solutions Team member, and Grant Young, Department of Land Conservation and Development’s team member, presented an informational item about their work.. Fairley discussed the development of the Regional Solutions Team model, the centers around the state and the connections teams make in small communities.

Fairley explained that the team's advisory committee sets the focus for the team, and the areas of emphasis include: technical assistance and enhancing local capacity, infrastructure enhancements, workforce housing, business retention and expansion, marketable industrial land, brownfield development and use, alternative energy development, management of public lands, natural resource access and post-secondary education to support communities. He discussed projects the team has worked on which exemplify the cross-agency mission of the teams to serve Oregonians with a coordinated government response.

Jones described his work on the team, and the importance of DEQ working directly with other state agencies and very small communities to solve major environmental problems effectively and efficiently. Deputy Director Joni Hammond provided additional information about DEQ's work with communities of all sizes across Oregon.

Young discussed the importance of the center to the region and its communities. He noted that the team was instrumental to helping communities obtain industrial-use land and properties for economic development and business expansions and retention.

Fairley highlighted how the team and its model of good government improves local and statewide outcomes. The commission asked informational questions about the team and other partnerships for state agencies and communities.

This item was taken out of order

M. Informational item: Commissioner reports

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

Commissioner Rider noted that she plans to attend the upcoming DEQ water quality monitoring conference, September 11 and 12, regarding water quality monitoring opportunities for the state.

Commissioner Armstrong explained that, in his EQC-Board of Forestry liaison role, he did not attend the last Board of Forestry meeting in July due to no overlap of agenda topics, and intends to attend the Sept. 4 meeting. He thanked Chris Jarmer, Gary Springer and Janet Gillaspie for a recent tour of forestry sites regarding water quality.

Commissioner Johnson explained that she is starting conversations with DEQ and the Water Resources Board about opportunities for closer coordination among these agencies.

This item was taken out of order

K. Action item: Commission officers

The commission took action to elect a new chair and vice-chair, pending the end of service for Chair Blosser.

Action: Nominate Jane O'Keeffe to be chair

Move: Commissioner Armstrong

Second: Commissioner Johnson

The commission unanimously approved the motion.

Action: Nominate Ed Armstrong to be vice-chair

Move: Commissioner Rider

Second: Commissioner Johnson

The commission unanimously approved the motion.

D. Informational item: Water quality temperature standards

Greg Aldrich, DEQ Water Quality Division administrator, introduced this item. Jennifer Wigal, Water Quality Division Standards Program manager, and Debra Sturdevant, Water Quality Division Standards Program analyst, co-presented.

Sturdevant provided background information related to the Oregon temperature standards and recent EPA disapproval of certain portions of these standards. She outlined the elements of EPA's action, the consequences of the disapproval for Oregon's water quality standards and DEQ's plan for a path forward. The commissioners asked clarifying and informational questions about the standards, EPA's actions and DEQ's approach for next steps.

Following the staff presentation, the commission opened a 30-minute specific public comment period for this issue. Three groups presented comment.

1. Kathryn VanNatta, representing Northwest Pulp and Paper Association, explained that the pulp and paper industry is a long-standing NPDES permit holder, and has been involved with water quality issues since the 1950s. She noted that NWPPA has specific suggestions for next steps: show leadership, make difficult decisions, show common sense and forward motion to provide certainty for regulated parties. She asked the commission to shape an open, transparent and participatory public process for standards, and specifically include NWPPA when moving forward on issues.

2. Janet Gillaspie and Ken Williamson, representing Oregon Association of Clean Water Agencies, provided a written copy of their comments for the commission. Gillaspie explained that the water coming into wastewater treatment plants is above the temperature standards and the only proven way to appropriately reduce that temperature is with a chiller system, which ACWA does not support as a sustainable solution. Williamson described additional concerns about regulatory uncertainty and economic development issues related to rising wastewater treatment costs and stain on ratepayers. Williamson provided specific requests, as outlined in the submitted comments, for DEQ action and EQC direction. He requested, by the October 2013 EQC meeting, a schedule of permit analysis with specific information about categorization of permits and other detail as part of a strategic plan.

3. Chris Jarmer, Mike Freese and Curtis Martin, representing Oregon Forest Industries Council, Oregon Farm Bureau and Cattlemen's Association, respectively, presented comments on this issue. Jarmer noted that the remaining elements of the temperature standard are unworkable, and

it offers DEQ an opportunity to completely redo the standard. He noted that there is a lot of new information since the last development cycle, and that information could be used for the development of a new standard. He noted that implementation-ready TMDLs are a management strategy and not appropriate to include in the standard. He requested that the commission direct DEQ to begin work on a new temperature standard. Freese echoed many of Jarmer's comments, and noted that the remaining temperature standards are not feasible. He requested that DEQ develop a new and comprehensive standard and not pursue implementation-ready TMDL development. Martin noted that he is encouraged by the information presented today, with the emphasis for workable and feasible solutions for water quality standards. He explained that the standards applied to his land are unattainable, and that pre-settlement conditions and historical temperatures were not better than the contemporary conditions. He expressed concern about DEQ's involvement with standards that apply to agricultural land, and any standards must be based in observable data and related considerations of economic development.

E. Informational item: Watershed programs in eastern Oregon

Jeff Oveson, Grande Ronde Model Watershed program director, and Mason Bailie, program staff, discussed watershed improvements in the Grande Ronde watershed since the 1980s. Oveson described the work of the program, including its granting functions, coordination for watershed projects and project facilitation.

Oveson described the Restoration Atlas, a GIS-based tool that can be used to evaluate specific stream sections in a comprehensive manner, including present species, to evaluate the best way to spend restoration funding. He noted that the use of this model requires significant collaboration with private landowners, and establishing new relationships for restoration projects. He discussed other projects around the basin and related environmental improvements. Bailie discussed the data collection and database work of the program, which is accessible through the program's website as open access for any interested party. He noted that the program is developing an app that allows monitoring data uploads across the watershed using mobile phones and their embedded GPS data. Oveson described the program's education and outreach efforts, including a newsletter distributed widely in the community.

Chair O'Keeffe recessed the commission meeting at 5:20 p.m. until 8:30 a.m. on Thursday, August 22.

Evening session

Following the close of the formal meeting, the commission held an informal session from 5:30 to 6 p.m. with local officials followed by an open forum from 6 to 6:45 p.m. for any person interested in speaking with the commissioners and DEQ staff on environmental topics. These sessions were scheduled for commissioners to meet the representatives from the La Grande area and hear directly from area residents reading their environmental concerns. No commission action was taken during these sessions, which were not recorded as part of the formal meeting.

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

Thursday, August 22 – Regular meeting: 8:30 a.m. to 4:30 p.m.

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

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

F. Public forum

At 8:30 a.m., the commission opened public forum. People wishing to present comment could do so at the meeting, or via conference call at the Portland headquarters, Bend and Medford DEQ offices.

1. Page Fredrickson, City of Halfway, presented comment about the struggles faced by very small communities and their wastewater treatment system needs. She expressed appreciation for the Northeastern Oregon Regional Solutions Center for its work and coordination. She invited the commissioners to visit Halfway and tour the facilities.

2. Neila Wallace and Don Walchli, Hermiston residents, presented comment regarding odor from Hermiston Foods processing plant. Wallace noted that the odor stopped for roughly three weeks in July, but has returned, and requested information about what the facility did to alleviate the odors between July 10 and August 21. Walchli expressed concern about food and human health safety from the land-applied process water and the related odor. He asked the commission to find ways to protect the farm lands, growing mostly melon and other fruits, near Hermiston Foods. He noted that the facility uses pivot irrigation, which is not an appropriate method.

A third presenter joined Wallace and Walchli, but did not provide his information on the registration sheet.

Following these comments, the commission asked Linda Hayes-Gorman, DEQ Eastern Region Division administrator, to provide information about the issues raised by the presenters. Hayes-Gorman provided background information about the Hermiston Foods facility, including some information about permit conditions and localized odor. She described DEQ’s process in response to complaints regarding odor and outlined opportunities for the facility to improve its operations. Deputy director Hammond suggested that DEQ bring an informational item on this issue to a future commission meeting, which the commission approved. DEQ intends to bring that item at the December 2013 EQC meeting, and will inform the commenters about specific item timing.

This item was added to the agenda by the commission

1. Informational item: Context regarding comments from item D, water quality standards for temperature

At the commission’s request, Greg Aldrich and Jennifer Wigal provided additional contextual information in response to the comments heard during item D regarding water quality standards.

This discussion followed the close of public forum. Commissioners provided additional comments and discussion on the item and asked clarifying and informational questions. Larry Knudsen, the commission's legal counsel, responded to specific clarifying questions.

G. Informational item: State of the Region

Linda Hayes-Gorman, Eastern Region Division administrator, presented an update on projects and activities in DEQ's Eastern Region offices and territory. Her presentation highlighted projects around the region that demonstrated DEQ's environmental regulatory work and the implementation of that work.

H. Action item: Conversion technology proposed rules

Brian Fuller, Hazardous and Solid Waste Program manager, and Bob Barrows, hazardous and Solid Waste Program planner, presented proposed rules and permit details for conversion technology facilities in Oregon. Several DEQ staff from the rule development group participated via conference call for the item. Barrows noted that there is an addendum to correct a citation error in the original packet of materials, which the commissioners received as an update prior to the meeting.

Barrows discussed background information about conversion technology as a summary of the report information. He explained the rule development process, provisions in the proposed rules and permits, proposed fees and the comments received during the public review and comment process.

Action: Adopt the proposed permanent rules in attachment A of the staff report for item H as part of chapter 340 of the Oregon Administrative Rules, with the one correction as noted in the addendum submitted to the commission.

Move: Commissioner Rider

Second: Commissioner Johnson

The commission unanimously approved the motion.

I. Informational item: Budget and legislative updates

Jim Roys, budget manager, and Palmer Mason, government relations manager, co-presented this item by conference call. Mason provided a summary of legislative actions affecting DEQ from the 2013 Oregon Legislative Session. Roys presented an update on agency budget developments, including approved policy option packages for new work. He noted that Chair O'Keeffe will be asked to certify the 2013-15 DEQ Legislative Adopted Budget at the October EQC meeting.

Chair O'Keeffe recessed the commission from 12:10 to 1:05 p.m. for lunch and executive session.

Lunch and executive session

Commissioners, legal counsel and some DEQ staff met for a working lunch and executive session from approximately noon to 1:05 p.m. The session was held pursuant to ORS 192.660(2)(h).

This item was taken out of order

L. Informational item: Director's dialogue

Deputy Director Hammond presented updates on DEQ activities and projects of interest to the commission. These updates included:

- Improved interagency coordination related to wildfires
- Clean Fuels program status and next steps
- Low Emission Vehicle program development and planned rules
- Planned fee increases for the Air Contaminant Discharge program and Water Quality Division permit program
- Planned changes for the Clean Diesel Program
- An update about leaking tanks across Oregon, as discussed at the June EQC meeting
- Recognition of a national award from ECOS for innovative public outreach using technology for DEQ's public hearing model used for the Coyote Island Terminal permit applications

Deputy director Hammond also noted that she recently visited the Umatilla Depot and saw some of the demolition and control systems being used as part of the facility closure.

J. Action item: Contested case hearing

The commission heard arguments and took action on a contested case regarding water quality violations. Larry Knudsen, the commission's legal counsel, provided background information and discussed the protocol for commission review in contested cases. The commissioners reported no conflicts of interest or ex parte contacts in this case.

Leah Feldon, Office of Compliance and Enforcement manager, and Sarah Wheeler, environmental law specialist, presented DEQ's position. Montgomery Cobb presented the respondents' position via conference call. The commission heard opening arguments and rebuttals from both parties, starting with respondents, and asked clarifying and informational questions about the case.

Chair O'Keeffe reviewed the four options for commission review, as outlined in the staff report for the item. The commission reviewed the material and discussed its options for action.

Action: Issue a final order affirming the administrative law judge's determination with the exception of accepting alternate finding D1 in the report.

Move: Commissioner Johnson

Second: Commissioner Armstrong

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

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

Abstain: Commissioner Rider

Draft x
Approved as presented
Approved with amendments

Following the motion, Larry Knudsen recommended that the commission authorize Director Pedersen to sign a final order on behalf of the commission and as prepared by Knudsen.

Action: Direct Larry Knudsen to prepare a final order reflecting the commission's action and authorize DEQ Director Dick Pedersen to sign that final order on behalf of the commission.

Move: Vice-chair Armstrong

Second: Commissioner Johnson

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

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

Abstain: Commissioner Rider

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

2013 EQC meetings

Oct. 16-17, 2013: Tillamook

Dec. 11-12, 2013: Portland