

Minutes of the three hundred and sixty-second regular meeting of the Oregon Environmental Quality Commission

June 15-17, 2011
Pendleton
Hamley Steakhouse, 8 SE Court Ave.

Wednesday, June 15

The commission held an informal town hall-style meeting in Pendleton. Residents and local government officials were invited to attend for an opportunity to discuss issues of environmental concern in the Pendleton area. Approximately 30 people attended the session.

Topics discussed included:

- Noise concerns related to wind turbines and wind farm developments
- Potential nitrate contamination and other hydrological impacts of Hermiston-area groundwater due to the land application of commercial/industrial wastewater from Hermiston Foods, a large vegetable processing plant
- DEQ's ability to enforce nuisance laws for odors
- Community-based groups' work to revise and increase the setback provisions for wind energy developments and turbines
- Appreciation for DEQ's work to clean up a brownfield and former mill site in Wallowa County
- Wallowa County's desire to operate its own onsite septic system program, currently operated by DEQ
- Appreciation for DEQ's involvement with the Umatilla Watershed Council and its volunteer monitoring network
- Pendleton wastewater projects and environmental achievements
- Aquifer storage and recovery, and Pendleton's plan to double the size of its program

Thursday, June 16

Chair Blosser convened the meeting at 8:40 a.m.

Present: Chair Blosser, Vice-chair Williamson, Commissioner O'Keeffe, Commissioner Dodson and Commissioner Uherbelau

A. Action item: Approval of meeting minutes

The commission reviewed and discussed the draft meeting minutes from the April 21-22, 2011, regular EQC meeting.

Action: Approve the April 21-22, 2011, meeting minutes as presented.

Move: Commissioner Dodson

Second: Commissioner O'Keeffe

The commission unanimously approved the minutes as presented.

B. Informational item: Umatilla update

Joni Hammond, DEQ deputy director, introduced the item and Steve Potts, Umatilla Chemical Demilitarization Program administrator. Potts presented an update on activities at the depot, and presented information about the closure and post-closure plan for the facility following the completion of the demilitarization program.

C. Action item: Water quality standards rulemaking

Neil Mullane, DEQ Water Quality Division administrator, introduced the item and his co-presenters: Jennifer Wigal, standards program manager, Gene Foster, watershed program manager and Sonja Biorn-Hansen, water quality policy analyst. Mullane explained that the presentation is in four parts and will cover the elements of the proposed rules, implementation options and general information about DEQ's agency-wide toxics reduction strategy. The commissioners asked clarifying and informational questions throughout the item.

Jennifer Wigal presented background and summary information and explained the processes DEQ used to create the proposed rulemaking package. She noted the four directives the commission gave to DEQ in October 2008, and the ways DEQ has incorporated those directives into the proposed rule revisions. Wigal described the key issues for the proposed rules, and discussed the comments received for each of the key issues. Gene Foster presented key issues in the rulemaking related to nonpoint sources, and discussed the comments received for this issue. Sonja Biorn-Hansen presented information about the expected effects for permitted sources if the proposed standards are adopted. Neil Mullane explained DEQ's general approach to permitting, and described the potential analysis and review process that would be used to evaluate information for permitting facilities. He noted that the proposed standards are part of the agency-wide toxics reduction strategy. Wigal and Foster presented the next steps, follow-up actions and associated project and program strategies.

The commissioners asked additional questions for clarification and information, and discussed the proposed rule revisions.

Action: Amend Oregon's water quality standards revising the human health criteria for toxic pollutants and revising the water quality standards implementation policies as presented in attachments A1, A2 and A3 of this item. the new and revised provisions contained in OAR 340-041-0033, OAR 340-041-0059, and Table 40 become applicable under state law only after EPA approves the revisions it considers water quality standards and they become effective under the federal Clean Water Act.

Move: Vice-chair Williamson

Second: Commissioner Dodson

Commissioner O'Keeffe thanked DEQ, as an agency and its staff, for the work in developing and preparing the materials for the proposed standards. She explained the specifics of her position and justification for her opposition to the rule adoption, and noted that she would like DEQ to engage in more collaborative rulemaking processes and allow an opportunity for commenters to provide feedback if the response to comments is satisfactory and addresses the comment. Chair Blosser noted his understanding of the misgivings, both that the standards are too strict and too lax, and stated the justification for his vote

in support of adoption. Commissioner Uherbelau stated her concerns and support for the proposed standards, and stated the justification for her vote. Vice-chair Williamson noted that the proposed standards represent a societal shift to provide protection for sensitive populations, which is a move in the right direction, and stated the justification for his vote in support of the rule adoption. Commissioner Dodson noted her response to the proposed standards, stressing the importance of the human health component of the standards and necessity to clean up existing pollution to improve the health of future generations, and stated the justification for her vote in support of adopting the rule.

The commission approved the motion with four commissioners in support, one opposed and none abstaining.

In favor: Chair Blosser, Commissioner Uherbelau, Vice-chair Williamson and Commissioner Dodson

Opposed: Commissioner O’Keeffe

Abstaining: None

Director Pedersen presented a closing statement, and thanked EPA and the Confederated Tribes of the Umatilla Indian Reservation as government partners, and the stakeholders who have spent thousands of hours to engage in the development of the standards. He noted that the commission’s 2008 directive was to address concerns collaboratively, and that charge continues to be relevant and the standards are a start for DEQ to reduce toxic pollution for all Oregonians. He stated his commitment to present occasional updates to the commission about the progress of this work, and noted his appreciation for the commission’s hard work in evaluating the standards and its vote.

Chair Blosser invited Jenine Jennings and May Lou Socia, EPA staff, to present comments. They both noted their appreciation for the DEQ staff and stakeholders who worked on the standards, and expressed their commitments to collaborative solutions related to the standards.

Lunch and executive session

Chair Blosser recessed the commission for lunch and an executive session from noon to 1:15 p.m. This executive session was held pursuant to ORS 192.660(2)(f) and (h).

D. Action item: Water quality permit fee rulemaking

Neil Mullane, Water Quality Division administrator, introduced the item. Chris Clipper, Water Quality Program analyst, presented the proposed permit fee increase of two percent for most water quality permits and one change to reduce fees, to \$230 for a one-time permit instead of two separate and more expensive permits, for construction stormwater permits for sites of less than one acre and part of a common plan of development that covers one acre or more. The commission asked clarifying and informational questions.

Action: Adopt the amendments in attachment A of this staff report for permit fees in chapter 340 divisions 45 and 71 of the Oregon Administrative Rules.

Move: Commissioner O’Keeffe

Second: Commissioner Dodson

The commission approved the motion unanimously.

This item was taken out of order

F. Informational item: Budget and Legislative update

Director Pedersen presented an update on DEQ's budget development process, state budget status and legislative activities. He discussed the current biennium's budget, and noted that the most recent state revenue forecast from May was more positive than prior forecasts. Director Pedersen explained that DEQ, like all state agencies, was asked to prepare reduction options to respond to the overall state budget revenue shortfalls for the 2013-15 biennial budget.

Director Pedersen discussed specifics of DEQ's recommended budget, adjustments made to the budget for additional reductions, the status of DEQ's budget in the House and Senate Ways and Means approval process and general budget status information. He summarized the status of bills related to DEQ's work, and discussed the projected implementation and management of the bill outcomes for DEQ and other state agencies.

E. Action item: Contested case hearing regarding AAA American Eagle Septic dba Hank's Septic Service

Leah Koss, Office of Compliance and Enforcement manager, introduced the item and Bryan Smith, DEQ environmental law specialist. Larry Knudsen, the commission's legal counsel, provided background and process information for the contested case hearing. Chair Blosser polled the commission for any ex parte contacts or conflicts of interest in this matter, and none were reported.

Michael Cross, managing member for the company, presented his opening argument for this matter. Cross requested that the commission enter into a formal and binding voluntary compliance agreement in lieu of upholding the judge's proposed final order. Smith presented DEQ's opening arguments for this matter. Cross and Smith presented rebuttal arguments for the company and DEQ, respectively, and responded to commissioners' clarifying and informational questions.

Action: Uphold the administrative law judge's proposed final order, including license revocation, in this matter.

Move: Vice-chair Williamson

Second: Commissioner O'Keeffe

The commission approved the motion with four commissioners in favor, none in opposition and one abstaining.

In favor: Chair Blosser, Vice-chair Williamson, Commissioner O'Keeffe and Commissioner Dodson

Opposed: None

Abstaining: Commissioner Uherbelau

G. Informational item: Commissioner reports

Commissioners provided verbal updates of environmental issues and activities of interest to the commission.

Vice-chair Williamson explained that DEQ receives some funding from the Oregon Watershed Enhancement Board, and a recent Senate Bill would revise the funding formula used to allocate those funds. That revision will increase DEQ's allocation from \$4 million to about \$6.5 million, but the additional funds must be spent on activities for salmon recovery.

Chair Blosser asked Director Pedersen for an update on the expiring commissioner terms for Vice-chair Williamson and Commissioner Dodson. Director Pedersen explained that they were asked, and both accepted, to extend through the August EQC meeting, and the Office of Executive Appointments is collecting names and interest and will appoint two new commissioners in September.

Commissioner Uherbelau noted that there was a well-publicized recent drug take-back event in southern Oregon, and asked if there was a coordinated statewide program. Director Pedersen responded that he was not aware of options in the Pendleton area. Chair Blosser noted that there is federal legislation in progress that should make it simpler for local governments to operate these programs.

Chair Blosser recessed the commission meeting at 3 p.m. until 8:30 a.m. on Friday, June 17.

Tour – City of Pendleton wastewater treatment plant

The commission toured the City of Pendleton's wastewater treatment plant and met with environmental protection staff from the city. The city provided transportation for the commissioners and DEQ staff to and from the facility. No other commission business was discussed during the tour.

Members of the commission and some DEQ staff met for an informal and social dinner on Thursday evening in Pendleton. No commission business was done at the dinner. State law requires notice of this informal dinner.

Friday, June 17

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

Present: Chair Blosser, Vice-chair Williamson, Commissioner Dodson, Commissioner O'Keeffe and Commissioner Uherbelau

H. Public forum

The commission opened public forum and accepted comment from people attending in Pendleton and by telephone from the Medford, Eugene, Bend and Portland headquarters DEQ offices.

Eight people submitted request-to-speak forms in Pendleton. No people attended to present comment at the Medford, Eugene, Bend or the Portland headquarters DEQ offices.

- 1. Kim Puzuy** – Port of Umatilla. Puzuy thanked Director Pedersen for his, and DEQ's, work related to near-shore shipping.

2. **Rod Skeen** – Confederated Tribes of the Umatilla Indian Reservation. Skeen presented comment about the closure of the Umatilla Depot and submitted a letter from the CTUIR formally withdrawing its support for the U.S. Army’s base closure plan, based on changes made to the plan in early June.
3. **Kathryn VanNatta** – Northwest Pulp and Paper Association. VanNatta submitted a letter to the commission, which she read into the record, noting concerns from the association related to the just-approve water approved water quality standards for human health. The commission asked clarifying questions about VanNatta’s comments and letter.
4. **Ed Chestnut** – Blue Mountain Alliance, Milton-Freewater city council, Walla Walla Basin Watershed Council. Chestnut presented comments generally in opposition to wind energy development projects in and near the Blue Mountains and stated that a letter with these concerns will be formally delivered to Director Pedersen this month.
5. **Norm Kralman** – Blue Mountain Alliance. Kralman submitted a letter to the commission and presented concerns for the process to site wind energy projects in the Blue Mountains. He requested that DEQ take a proactive approach to environmental concerns related to wind energy projects in Umatilla County and the Blue Mountains due to potential for significant environmental damage.
6. **Jill Ragsdale** – concerned citizens group, farmers and neighbors near Hermiston Foods. Ragsdale presented her concerns related to nuisance odors, a decline in property values, overspray of land-applied process wastewater and general issues associated with operations at Hermiston Foods. She noted that neighbors do appreciate the economic contributions of the company, and do not want them to leave the region, but they do want protection from the business interests of the company and better environmental outcomes.
7. **Neila Wallace** - resident. Wallace noted similar concerns to Ragsdale, with emphasis on food safety concerns related to overspray of land-applied wastewater from the company. She commented that the wastewater is also a quality of life issue and makes it difficult for residents to work their own land and do daily activities due to the smell from the wastewater. Wallace asked who is sampling the wastewater lagoons, specifically where they are sampling and what the compliance timeline is for the company and how long residents will wait for resolution of the odor issues.
8. **Shauna Pettey** – Tetra Tech, technical support services for Morrow County and representing Morrow County. Pettey submitted a letter, which she read into the record, stating Morrow County’s withdraw of support for the depot closure plan.

Chair Blosser left the meeting from 9:30 to 9:45 a.m. Vice-chair Williamson served as the chairperson for this time.

Item I – Informational item: Recognition for household hazardous waste program project partners

Director Pedersen introduced Linda Hayes-Gorman, Eastern Region Division administrator, who presented introductory remarks for this item. Hayes-Gorman and Vice-chair Williamson presented certificates to the three project partners who were able to attend the meeting.

- Steve McClure, Union County commissioner, thanked the commission, noted it was a strong partnership and invited DEQ and the commission to visit the facility when in the region.
- Russ McMartin, Wallowa County Public Works director.
- John Bozarth, City of LaGrande city councilor.

Director Pedersen thanked the project partners, and noted that this accomplishment is the outcome of a long and difficult process. He said that this project is an example of good government, and is a model for DEQ to follow. Director Pedersen stated that he will visit the facility when it is running. Vice-chair Williamson noted that the household hazardous waste facility is strong environmental stewardship and commended the partners for involving the agricultural community to reduce the pesticides in the community.

The commission invited one additional public comment prior to item J. The comment was presented in person at the Pendleton meeting venue.

H. Public forum

9. **Don Walchli** – resident, farmer and neighbor of Hermiston Foods. Walchli expressed concern for the food safety impacts of Hermiston Foods, and asked the commission to be concerned with the food safety of the small farmers' crops and ability to farm their land. He asked the commission to work with the farmers first and the company second in order to protect the farmers. The commission responded to Walchli's comments and questions.

J. Action item: Temporary rulemaking for biomass boilers

Andy Ginsburg, Air Quality Division administrator, introduced the item and noted that Rachel Sakata, air quality planner, will present the item by telephone. Sakata presented background information, explained why DEQ is presenting the temporary rules for commission action, discussed the stakeholder and outreach processes and presented the rule revisions. The commission asked clarifying and informational questions for the proposed temporary rules.

Action: Adopt the temporary rules, as seen in revised attachment A of this item, as revisions to OAR 340 Divisions 200, 210, 212, 228 and 262, and the statement of need and justification of temporary rules, as seen in attachment B of this item.

Move: Commissioner O'Keeffe

Second: Vice-chair Williamson

The commission approved the motion unanimously.

K. Action item: Update to the memorandum of understanding between the commission and Oregon Department of Agriculture for the Oregon field burning program

Andy Ginsburg, Air Quality Division administrator, introduced the item and noted that Brian Finneran, DEQ air quality planner, and John Byer, Oregon Department of Agriculture, are present by phone for questions from the commission. Ginsburg presented the proposed update to the memorandum.

Action: Approve revisions to the to the memorandum of understanding that authorizes the Oregon Department of Agriculture to operate the Willamette Valley field burning program for the two-year period ending June 30, 2013, and also delegate the commission's authority to enter into the memorandum of understanding to the DEQ director.

Move: Vice-chair Williamson

Second: Commissioner O'Keeffe

The commission approved the motion unanimously.

L. Informational item: Director's dialogue

Director Pedersen presented updates and information about DEQ activities and environmental issues in Oregon.

The update included information from the item report, and included updates on:

- DEQ's Cleanup and Emergency Response Programs
- Updates on the *Davy Crockett*, a barge that was illegally scrapped on the Washington side of the Columbia River and resulted in state and federal response
- Concerns and activities at Hermiston Foods, and thanks to the commission for its involvement with this complicated issue.
 - The commission recommended that DEQ have staff, or a project partner, to do daily monitoring of the company by visiting and recording odors and overspray if and when they occur.
- Preliminary figures from the woodstove change-out program supported by federal stimulus funding
- An update on the graywater rulemaking process
- Upcoming rule revisions for the West Division Main Irrigation Canal near Hermiston
- A collection of updates about Klamath Falls, one geographic region in which DEQ is working on many projects. This geographic focus to the updates was a new approach to the way information is presented in the director's dialogue and does not represent any particular agency emphasis on environmental concerns in Klamath Falls.

The commission asked clarifying and informational questions about the material presented.

Chair Blosser adjourned the commission meeting at 11:35 a.m.

The commission met with the Confederated Tribes of the Umatilla Indian Reservation in a government-to-government meeting over lunch.

Remaining 2011 EQC meeting dates and locations

August 25-26: Portland
October 20-21: Astoria
December 15-16: Portland