

**Minutes of the three hundred and fifty-sixth
Oregon Environmental Quality Commission meeting
June 15-17, 2010**

Lakeview, Oregon

Tuesday, June 15

Commissioners met with local government officials at 6 p.m. at the Lakeview High School, followed by a town hall meeting at the Lakeview High School from 7 to 8:30 p.m. Members of the public discussed environmental concerns in the Lakeview area with the commissioners and DEQ staff. Concerns included:

- State budget cuts
- Odor concerns: asphalt and biomass plants
- Light and noise pollution from a planned biomass plant in Lakeview
- DEQ's role when dealing directly with residents violating environmental laws
- DEQ's role and actions if Lakeview is designed a nonattainment area for federal fine particulate matter (PM 2.5)
- Geographic and scientific basis for nonattainment designations, including the accuracy and precision of DEQ's air quality models
- Need for state and federal coordination on open burning issues: slash burning by federal agencies sometimes happens during a local and state burn ban due to a lack of communication

*Tuesday evening's activities were held at the Lakeview High School, 906 South 3rd Street.
All other commission activities were at the Elks Lodge, 323 North F Street.*

Wednesday, June 16

Chair Blosser convened the meeting at 9:03 a.m.

Members present: Chair Blosser, Vice-chair Williamson, Commissioners O'Keeffe and Dodson

A. Preliminary commission business: Review and adopt minutes of the April 29-30, 2010 regular meeting

The commission reviewed and discussed the minutes from the April 29-30, 2010, regular meeting.

Action: Approve the minutes as presented.

Moved: Vice-chair Williamson
Second: Commissioner O’Keeffe
Passed unanimously

B. Informational item: Status update for the Umatilla Chemical Agent Disposal Facility

Presenters: Joni Hammond, deputy director, and Steve Potts, Chemical Demilitarization Program

Steve Potts, acting administrator for the chemical demilitarization program, updated the commission on activities and projects at the Umatilla facility. Joni Hammond, deputy director, explained that the U.S. Army submitted comments to the commission regarding the depot’s ability to complete weapons destruction by April 2012, as required by international treaty. Hammond noted that the Army will attend the commission’s meeting in Portland this August. Hammond summarized the comments from the Army, and restated that DEQ is hopeful that the Army’s commitment to the treaty deadlines will result in completion of all activities by April 2012.

The commission asked clarifying questions about the treaty’s deadlines and requirements, and Hammond replied with additional information. Director Pedersen clarified that there are many organizations and others working with the depot on current processes and closure activities.

C. Action item: Petition for reconsideration - Umatilla Chemical Agent Disposal Facility best available technology determination

Presenters: Joni Hammond, deputy director, and Steve Potts, Chemical Demilitarization Program

Steve Potts, acting administrator for the chemical demilitarization program, provided a brief summary of the commission’s February 2010 decision regarding best available technology for treatment of spent activated carbon. Potts explained that the commission received a petition for reconsideration of that decision, and that DEQ recommends that the commission deny or take no action the petition.

Action: Deny the petition for reconsideration of the best available technology determination for treatment of spent activated carbon at the Umatilla Chemical Agent Disposal Facility, as issued by the commission Feb. 19, 2010.

Moved: Commission O’Keeffe
Second: Commissioner Dodson
Passed unanimously

Larry Knudsen, the commission's legal counsel, prepared a final order indicating the commission's action for Chair Blosser's signature.

D. Informational item: Willamette River Basin streambank restoration

Presenters: Neil Mullane, Dr. Gene Foster and Ryan Michie, Water Quality Division

Neil Mullane, Water Quality Division administrator, introduced Dr. Gene Foster and Ryan Michie, and gave brief background information on the presentation topics. Michie, water quality analyst, explained restoration efforts and best management practices for streamside improvements in the Willamette River Basin. Michie noted that DEQ's data and reports mostly point to nonpoint sources as major and primary contributors to stream impairment and riparian degradation. Michie explained that water quality work results in more than water quality benefits, and discussed some of the economic impacts for small communities engaged in restoration and improvement work.

The commission discussed outreach and project opportunities around the state, and other specifics of the Willamette Basin Restoration Cost Estimate report. Chair Blosser asked how DEQ decided on specific buffer zones, and what science or best management practices informed the decision. Michie explained the data DEQ used to support its assessments and decisions for establishing riparian buffer zones. Foster added clarifying information for the models and processes DEQ uses in its riparian assessments, and the science at the basis of the models.

Michie presented results and summarized the findings of the report. Mullane explained that the Water Quality Division is working to align its many subprograms in a basin approach. Vice-chair Williamson noted that many organizations and agencies are interested in basin-specific data, and much of that interest is driven by the success of restoration efforts in the Deschutes Basin. Director Pedersen asked the commission for suggestions on any information it would like on these issues, or any others, and engage in dialogue on the basin approach. Commissioner Dodson noted that DEQ should stress the importance of water as a quality of life issue, and bring that educational and outreach message to all Oregonians.

E. Informational item: The Freshwater Trust funding for streambank restoration

Presenter: Joe Whitworth and David Primozych, The Freshwater Trust

Joe Whitworth, president of The Freshwater Trust, gave background information on his organization and the history of conservation for water quality and quantity. Whitworth explained that the trust's board is enthusiastic about water quality, and wants to secure \$900 million of investment for riparian restoration in the Willamette Basin in the next 10 years. Whitworth introduced StreamBank, a software platform developed to assess restoration projects and automate or expedite process elements into a web-based interface for all project partners.

Whitworth noted that StreamBank is not the only solution, but is a new tool for riparian restoration.

David Primozych, director of ecosystem services for The Freshwater Trust, explained that there is a major funding issue for riparian restoration, and leveraging funding in efficient and coordinated ways can create the best net environmental benefits. Primozych explained the process for establishing and maintaining a market for conservation projects and results, and noted that the Oregon Watershed Enhancement Board has agreed to purchase verified conservation outcomes that would show a demand for the projects and entice private-sector investment.

Director Pedersen explained that DEQ is working to assess the StreamBank interface, and see if the tool provides and produces the necessary environmental outcomes. Vice-chair Williamson noted that the Oregon Watershed Enhancement Board is using an ecosystems services approach to projects, and very interested in how StreamBank will work. The commission discussed the scope and application of StreamBank, the work of The Freshwater Trust and approaches to net environmental restoration and outcome-based projects.

Lunch and executive session

The commission met in executive session from approximately 11:45 a.m. to 1 p.m. to consult with counsel concerning legal rights and duties regarding current or potential litigation against DEQ. This executive session was held pursuant to ORS 192.660(2)(f), (h).

F. Informational item: Fine particulate matter in Lakeview

Presenters: Andy Ginsburg and Rachel Sakata, DEQ Air Quality Division, with Ray Simms, Town of Lakeview

Andy Ginsburg, Air Quality Division administrator, introduced Rachel Sakata, air quality planner, who updated the commission on particulate matter concerns in Lakeview. Sakata explained Lakeview's past issues and successes with coarse particulate matter, and explained that Lakeview seems to be violating the current daily standard for fine particulate matter and is well below the annual standard for both coarse and fine particulate matter. Sakata discussed Lakeview's past success with its coarse particulate matter attainment plan and its current violation of the revised fine particulate matter standard. The commission asked why monitors were moved from Lakeview to another community in the mid-2000s, especially since Lakeview seemed to fall out of compliance after a revision to the 2006 fine particulate matter standard. Ginsburg explained the function and implementation of DEQ's monitoring network, its application and consideration. Sakata explained that EPA has the responsibility to designate Lakeview as a nonattainment area, and EPA is also considering lowering the fine particulate matter standard in 2011 and will evaluate Lakeview's status at that time.

Ray Simms, Lakeview town manager, explained actions Lakeview has taken in the past and currently to reduce fine particulate emissions. Simms noted that as standards are lowered it becomes more and more difficult, and nearly impossible, for residents to comply with standards and that Lakeview is committed to working towards attainment. Sakata noted that Lakeview has been proactive in addressing its air quality concerns. Simms explained that there is a proposed biomass plant in Lakeview and the proposed plant would remove an old and inefficient boiler from use and allow residents to bring their yard clippings and wood to burn at the plant rather than at home, where it would burn less cleanly. He noted that Lakeview is applying for grant funds to use geothermal heating in the Lakeview hospital and school facilities, which will remove about 120,000 gallons of fuel oil from use and burning.

Sakata explained that Lakeview would likely get \$450,000 for grants and loans to assist residents in changing out uncertified woodstoves for cleaner-burning certified woodstoves. Sakata explained next steps for air quality concerns in Lakeview, and the commission's potential role and actions.

The commission discussed the air quality concerns in Lakeview and other parts of the state. Simms noted that there is additional work to do in Lakeview for air quality, and there is a need for more coordination between state, local and federal agencies on issues of slash burning and other burning events. Ginsburg closed the item by showing the commission a chart of the nine areas of the state that would be in nonattainment if EPA does lower its daily fine particulate matter standard in 2011.

G. Informational and discussion item: The Climate Trust

Presenters: Andy Ginsburg, Air Quality Division, and Ben Vitale, The Climate Trust

Andy Ginsburg, Air Quality Division administrator, introduced the item and Ben Vitale, president of The Climate Trust, who connected to the meeting by telephone conference call. Ginsburg noted that this is the third in a series of informational items on climate change, and the commission will hear three more informational items on climate change at its August, October and December 2010 meetings.

Vitale presented information on his professional background, his work at The Climate Trust and an overview of the topics. Vitale discussed how carbon financing works at the state and federal level, and the general operation of cap-and-trade financing and carbon offset financing. Vitale explained the history of The Climate Trust, its role, work, governance structure and recent changes to mission to accelerate innovative and effective climate solutions that endure. Vitale discussed types and examples of projects that The Climate Trust does, and explained the growth of The Climate Trust in mirror relationship to the growth of the carbon and emissions reduction markets.

Vitale also explained The Carbon Trust’s work in Oregon, policy decisions and work at the state and national level, trends in the carbon market and opportunities for working with the commission. The commission discussed potential partnerships, necessary elements for any changes to the Oregon Standard to include all six greenhouse gases, not just carbon dioxide, opportunities for The Climate Trust to evaluate DEQ’s reduction options for multi-pollutant approaches and voluntary emission reductions.

Chair Blosser recessed the commission at 3:09 p.m. until 8 a.m. on Thursday, June 17.

On Wednesday evening, the commission toured a composting facility operated by Lakeview Lockers, a Lakeview food business. The commission held an informal dinner for staff and commissioners following the tour. No commission business was discussed during the tour or dinner.

Thursday, June 17. Chair Blosser reconvened the meeting at 8:07 a.m.

H. Public forum

At approximately 8 a.m. on Thursday, June 17, the commission provided members of the public an opportunity to speak to commission members on environmental issues. People wishing to speak filled out a request-to-speak form and, in accordance with ORS 183.335(13), no comments were allowed on rule adoption items for which public comment periods have closed. People presented comment in person at the Lakeview Elks’ Lodge or from six DEQ offices across the state by telephone conference call. One person in Medford and one person in Portland commented by telephone. The other offices for comment were Bend, Eugene, The Dalles and Pendleton.

Lakeview - Jim Walls, Lake County Resources Initiative. The Lake County Resources Initiative finished a carbon footprint project, and Lakeview can be about 66 percent carbon neutral if a planned biomass plant project is sited, permitted and begins operating.

Medford – Tara Lowrance-Matthis, Josephine County resident. Lowrance-Mattis submitted written comments and presented oral testimony to the commission related to water quality concerns in forested areas. Lowrance-Mattis asked the commission to review delegation of Clean Water Act authorities and not delegate authority to parties with a major financial interest in water concerns and forest practice concerns.

Portland – Kathryn VanNatta, governmental affairs manager of the Northwest Pulp and Paper Association, expressed the association’s concerns about the process, timing,

content and viability of implementable standards of the toxics rulemaking. VanNatta asked the commission to adopt standards for heavy metals on an accelerated schedule and move NPDES permits forward. VanNatta asked the commission to direct DEQ, consistent with its October 2008 directive, to concentrate efforts on revising numeric criteria and developing viable implementation measures for the toxics rulemaking.

Director Pedersen, Chair Blosser and Neil Mullane, Water Quality Division administrator, responded to the comment and clarified information on several points. Mullane explained that DEQ would like to bring a rule forward as early as August 2010 for public comment, which would relate to the heavy metals concern VanNatta expressed in her comments.

I. Action item: DEQ recommendation for EQC action on PGE petition

Presenters: Andy Ginsburg, Air Quality Division

Chair Blosser presented opening remarks and introduced Andy Ginsburg, Air Quality Division administrator, and Rachel Sakata, DEQ air quality planner and hearing's officer for the item. Ginsburg presented brief background information on past action and rules responded to in the petition for consideration before the commission. Ginsburg stated that DEQ recommends that the commission deny the petition, and then direct DEQ to initiate rulemaking based on a wider range of pollution control options for the Boardman plant, consistent with an earlier shutdown date, that meets all applicable federal requirements.

Ginsburg summarized the written comments received by DEQ during the comment period. Chair Blosser asked the six offices, connected by telephone, and Lakeview for the numbers of people signed up to comment in each office. Sakata read the official comments to begin the public hearing, and opened the hearing at 8:35 a.m. The commission heard testimony from two people in Lakeview, one person in Eugene, two people in Pendleton and 17 people in Portland. The testimony was mixed between comments supporting the petition and those asking the commission to deny the petition in favor of an earlier closure date or additional pollution control requirements. Sakata closed the public testimony on the agenda item at 9:55 a.m., and Chair Blosser thanked those who presented testimony. Vice-chair Williamson asked Andy Ginsburg to clarify the DEQ staff recommendation. Ginsburg provided clarification on DEQ process and several points of testimony presented today.

The commission discussed elements of the action item and future considerations for the review of any rule changes related to a closure date of 2020 for PGE's Boardman coal-fired power plant. The commissioners expressed their intent and desire to find solutions for the environment, ratepayers, and Oregonians.

Action: Deny PGE’s petition, and direct DEQ to initiate rulemaking based on a wider range of pollution control options as the starting point for revising regional haze pollution controls consistent with an early closure of the plant.

Moved: Vice-chair Williamson

Second: Commissioner Dodson

Commissioner Dodson encouraged DEQ to consider the testimony heard today when developing options. Chair Blosser stated his opinion that the commission’s decision is the most beneficial to the environment, business, ratepayers and Oregonians.

Passed unanimously

Larry Knudsen, the commission’s legal counsel, prepared a final order indicating the commission’s action for Chair Blosser’s signature.

J. Action item: Senate Bill 737 trigger level rulemaking

Presenters: Neil Mullane, Bruce Hope and Jennifer Wigal, Water Quality Division

Neil Mullane, Water Quality Division administrator, introduced the item and presenters, Jennifer Wigal, water quality standards manger, and Bruce Hope, toxicologist. Hope presented background information on the Senate Bill 737 process, and explained the status of development of plans and monitoring processes for priority persistent pollutants in the effluent of the 52 largest municipal wastewater treatment facilities.

Hope confirmed that the phrase “trigger level” is only for use in rule to determine if a plan is needed for specific pollutants and is not a water quality standard or criteria. Hope explained the organization of the pollutants and the process for selecting the levels. Hope explained that DEQ held a formal public comment period on the proposed rules, with approximately 140 comments from 24 separate individuals, organizations and groups. Wigal discussed some of the comments DEQ received, and the changes made based on those comments. Commissioner Dodson noted that the community and public process was very important for this rulemaking. Vice-chair Williamson asked for specifics on the sampling process and DEQ’s plan to assess the samples for the trigger levels and plan requirements. Chair Blosser asked if sources would have an opportunity for appeal, and Wigal clarified that the response to that situation is still in development but there could be opportunities. Wigal presented two specific edits to the proposed rules for additional opportunities for municipalities to respond to sampling results with corrective action that recognizes technical and timeframe limitations.

The commission asked DEQ to clarify, in the development of guidance for the plans, how pollutants could be removed from a municipality’s plan if subsequent sampling shows pollutants

below trigger levels. Chair Blosser noted that there is a policy and administrative concern for DEQ to remove pollutants from plans, and is a consideration for the public image for the municipalities. Mullane noted that DEQ is able to amend and modify plans and permits at any point.

Vice-chair Williamson stated that DEQ's intent in selecting the phrase "trigger levels" was to avoid negative associations, but that the word trigger has a strong negative association with guns. Vice-chair Williamson recommended that DEQ change the language from "trigger levels" to "initiation levels" throughout the rule, since it is the level at which the requirement of a plan is initiated. Staff and commissioners discussed the change to the language, which was then amended in the proposed rule.

Action: Approve the rulemaking for Senate Bill 737 initiation levels with the clarifying and amended language as read into the record by legal counsel Larry Knudsen during the item.

Moved: Commissioner O'Keeffe

Second: Commissioner Dodson

Passed unanimously

With the commission's agreement, Janet Gillaspie, executive director of the Association of Clean Water Agencies, presented testimony on ACWA's participation with the Senate Bill 737 rulemaking process. Gillaspie submitted written testimony and materials, which were entered into the commission's record. Gillaspie testified on ACWA's commitment to support toxics reduction, effluent sampling and pollution prevention plans based on that sampling effort. Gillaspie noted that future opportunities for collaboration between ACWA, its partners and DEQ exist for development of best practices and consumer solutions related to the priority persistent pollutant list. The commission discussed similar reduction work with industrial permit holders and nonpoint sources, and opportunities for the development of additional tools or methods for reduction. Director Pedersen recognized the work done and money committed by ACWA and the municipalities for this work, and noted the ongoing relationship between the parties and general commitment to reduction options and the removal of toxics from Oregon's environment.

The commission recessed at 12:05 p.m., and reconvened for a working lunch at 12:15 p.m.

K. Informational item: Budget and legislative update

Presenter: Greg Aldrich, Management Services Division

Greg Aldrich, government relations manager, discussed the current biennium budget and proposed reduction options as requested by the governor's office to offset a state budget deficit.

Aldrich discussed DEQ's preparation for the 2011-13 biennium, including legislative concepts, the base budget, policy option packages and other budget information. Aldrich discussed next steps for DEQ's budget and the commission's role to review and certify the agency request budget in summer 2010.

Aldrich discussed DEQ's budget development process and content for the 2011-13 biennium, and noted that DEQ's request for state general fund money is growing in 2011-13 due to inflation and changes to costs for all state employees. Aldrich presented specific and detailed information on DEQ's policy option packages, and the commission discussed opportunities for cost savings through changes to DEQ office operations and procedures.

Aldrich discussed DEQ's proposed reduction options, and explained the process used to develop and prioritize the list based on a request for options at the 25 percent-cut level for state general and lottery funds. Aldrich discussed the options, and the commission asked clarifying questions about the options and prioritization. Andy Ginsburg, Air Quality Division administrator, and Neil Mullane, Water Quality Division administrator, joined Aldrich at the presentation table to respond to the commission's questions. Director Pedersen noted that the list has been a major effort by Aldrich, DEQ's Executive Management Team and Legislative Team and acknowledged their process and thoughtfulness in creating a viable priority list. He noted that the commission always has the option to discuss the reductions with the Legislature when legislators are considering actions.

Aldrich explained next steps for the budget development process, and asked the commission to communicate any comments or concerns at the individual level over the next several months. The commission expressed interest and concern for finding efficiencies at the agency level and consideration of agency consolidation activities.

L. Director's dialogue

Presenter: Dick Pedersen, director

Director Pedersen updated the commission on the issues presented in the item's report, and answered clarifying questions related to the topics. Director Pedersen added updates on media coverage on a recent enforcement action against a school in Metolius with major asbestos violations, requirements for the wastewater treatment facility upgrades in Klamath Falls, and asked Jennifer Wigal, water quality standards manager, to present additional information on the development of water quality toxics standards. Wigal discussed recent DEQ actions concurrent with the schedule given to the commission in March 2010, stakeholder feedback and concerns, the acceleration of rulemaking for some heavy metals and the recent EPA disapproval of DEQ's standards passed in 2004. The commission noted the difficulty and magnitude of the water

quality toxics standards work, and commended both senior and junior staff members for their efforts and progress.

Director Pedersen noted that the success of the telephone conference call process at this meeting should set the precedent for the commission to use remote comment at all public forum opportunities.

M. Commissioner reports

Commissioner Dodson thanked Linda Hayes-Gorman for arranging the tour for the commission.

Vice-chair Williamson updated the commission on the status of funding for the Oregon Watershed Enhancement Board, and noted that OWEB is moving toward ecosystem services solutions for funding projects.

Commissioner O’Keeffe thanked the commission and staff for coming to Lakeview for this meeting, and noted the importance, economically and for the community, of DEQ holding a meeting in Lakeview.

Chair Blosser adjourned the meeting at 2:30 p.m.