

**Minutes of the three hundred and fifty-fourth  
Oregon Environmental Quality Commission meeting  
February 18-19, 2010**

**DEQ headquarters  
811 SW 6<sup>th</sup> Avenue, room EQC-A  
Portland, Oregon**

**Members present:** Chair Blosser, Vice-chair Williamson, Commissioner O’Keeffe, Commissioner Uherbelau and Commissioner Dodson

Note: Deputy Director Hammond attended a portion of Thursday’s meeting on behalf of Director Pedersen, who was away on state business.

**Chair Blosser convened the meeting at 8:35 a.m.**

**A. Preliminary commission business: Review and adopt minutes of the December 10-11, 2009 regular meeting**

The commission reviewed the minutes from the December meeting and found no amendments or additions necessary.

**Action:** The Oregon Environmental Quality Commission approves the minutes from the December 10-11, 2009 regular meeting as presented.

**Moved:** Commissioner Uherbelau

**Seconded:** Commissioner Dodson

*The motion passed unanimously.*

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

*Presenter: Rich Duval*

Rich Duval, DEQ Chemical Demilitarization Program administrator, presented an update for the status and operations of the Umatilla Chemical Agent Disposal Facility. Duval explained the facility’s challenges and solutions, and that the trial burn for mustard agent is tentatively scheduled to begin in March. Duval presented information on the other active facilities around the U.S. and their status in the demilitarization process.

**D. Action item: Best available technology determination for the mustard agent burn at the Umatilla Chemical Agent Disposal Facility**

*Presenters: Rich Duval and MJ Davis*

Rich Duval, DEQ Chemical Demilitarization Program administrator, introduced the item and MJ Davis, senior compliance staff person for the Umatilla Chemical Agent Disposal Facility. Davis explained the proposed technologies for the determinations, and discussed the necessity of making a best available technology determination for the disposal of agent-contaminated spent carbon.

Davis detailed each of the five options for disposal of agent-contaminated spent carbon, and identified the benefits and challenges with each option. Davis discussed the seven criteria for best available technology determinations, and the ways in which each of the five options satisfy or do not satisfy the criteria. She presented a table with the information for the criteria and level of satisfaction, included with the presentation slides and as an attachment with the commission's staff report and meeting materials.

Davis explained the choices for the disposal of agent-free, mercury-contaminated sulfur-impregnated carbon, and presented the staff recommendation for that determination. Davis added that DEQ recommends that the commission rescind the requirement for program staff to present quarterly reports, as was required under a previous best available technology determination but is no longer necessary.

Vice-chair Williamson asked clarifying questions for the processing of material at the facility, including the costs associated with the disposal of the material. Duval and Davis explained the costs and methods for transport and disposal. Commissioner Uherbelau asked about the research and scientific basis for the determinations, and explanations of statements and findings in the report. Commissioner Uherbelau stated that she was not able to make an informed decision at this time based on the information presented in meeting materials. The commission discussed elements of the information provided and considerations for the best available technology determination, with clarifying information provided by Duval and Davis.

**Action:** The Oregon Environmental Quality Commission issues the following findings regarding the best available technology determination for treatment of spent carbon:

1. The metals-parts furnace is the best available technology for treatment of agent-contaminated spent carbon at the Umatilla Chemical Agent Disposal Facility.
2. The best available technology to manage sulfur-impregnated spent carbon is as routine hazardous waste upon confirmation of agent-free status, transferring it offsite to treat for mercury and other hazardous constituents as needed and then disposing it.
3. The requirement for quarterly progress reports by the Umatilla Chemical Agent Disposal Facility on the status of the design and implementation of the carbon micronization system for treatment of spent carbon is rescinded.

**Moved:** Vice-chair Williamson

**Seconded:** Commissioner O’Keeffe

*The motion passed with four commissioners in support and one in opposition.*

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

In opposition: Commissioner Uherbelau

Abstaining: None

Larry Knudsen, the commission’s legal counsel, will prepare an order indicating the commission’s decision, which Chair Blosser will sign on behalf of the commission.

*This item taken out of order*

**B. Action item: Director’s transactions for commission review and approval**

*Presenters: Kerri Nelson and Dolores Passarelle*

Kerri Nelson, DEQ Management Services Division administrator, introduced the item and Dolores Passarelle, accounting manager. Commissioner Dodson asked for clarification on the meaning of personal business and Nelson explained the definition of this kind of leave.

**Action:** The Oregon Environmental Quality Commission approves the DEQ director’s transactions as seen in attachment C of this item.

**Moved:** Commission Dodson

**Seconded:** Commissioner Uherbelau

*The motion passed unanimously.*

**Vice-chair Williamson left the meeting at 9:45 a.m.**

*This item taken out of order*

**M. Action item: Transportation conformity rules**

*Presenters: Andy Ginsburg and Dave Nordberg*

Andy Ginsburg, Air Quality Division administrator, introduced Dave Nordberg, air quality planner, who provided background information on the Clean Air Act transportation conformity process, and associated rules. Nordberg noted that since DEQ last updated its state rules for transportation conformity in 1998 EPA has made many changes to the federal rules. Nordberg outlined the changes and also explained the public comment process for the rules.

Commissioner Uherbelau asked for clarification on the relationship between DEQ rules and EPA rules. Nordberg explained proposed rule changes include a repeal of many state rules, which would adopt the federal rule by default. Ginsburg clarified the consultation process and the

wording in the proposed rules. Nordberg clarified that federal agencies, not DEQ, retain enforcement authority for the conformity process.

**Action:** The Oregon Environmental Quality Commission adopt proposed modifications that amend and repeal Oregon's transportation conformity rules as presented in attachment A of this item and submit them to the U.S. Environmental Protection Agency as a revision to Oregon's State Implementation Plan.

**Moved:** Commissioner O'Keeffe

**Seconded:** Commissioner Uherbelau

*The motion passed with four commissioners in support, none in opposition and none abstaining. Vice-chair Williamson was not present for this motion.*

## **E. Informational and discussion item: Compliance and enforcement**

*Presenter: Leah Koss*

Leah Koss, DEQ Office of Compliance and Enforcement interim manager, introduced herself, the enforcement program at DEQ, and its role within DEQ's regulatory work. Koss provided an overview of the numbers and kinds of enforcement cases that DEQ encounters every year. Chair Blosser asked for clarification on the role of the Attorney General's office and other enforcement agencies for criminal actions, and Commissioner Uherbelau asked for information on how many criminal cases DEQ actually does each year and ways DEQ informs the community about violations and penalties. Koss clarified the role of other criminal enforcement agencies. She noted that DEQ issues a news release for every enforcement action, which has increased media coverage of enforcement issues.

Koss presented statistics from the enforcement program at DEQ from 2005 through 2009, showing the formal enforcement actions issued through the number of paid actions, appeals and settlements. The commission asked clarifying questions about the statistics and information, which Koss answered. Koss introduced DEQ's eight environmental law specialists.

Les Carlough, senior policy analyst for DEQ's Office of Compliance and Enforcement, presented a 2003 DEQ survey on deterrence. Carlough explained that the survey was administered by a third-party and designed to gather accurate and specific information in 2003 on DEQ's enforcement work and its ability to create deterrence. Koss and Carlough explained some of the survey questions and findings, and the relationship to deterrence from the information. Carlough added that a significant challenge for DEQ is to get information out to the public to create deterrence and enhance public awareness of environmental violations. Carlough noted that many small companies are not aware of who else is violating environmental regulations, and small companies a significant percentage of the businesses in Oregon and the ones who may need technical assistance or other pre-enforcement communication with DEQ.

Koss explained the penalties associated with civil violations, and the ways in which final penalty amounts are assessed. Koss briefly explained the statutes, processes and history for criminal enforcement of environmental violations in Oregon. Koss explained DEQ's role in the criminal enforcement process for environmental violations, and explained the partners involved in the process. Chair Blosser asked for additional information on the success and strength of the relationship between DEQ, the Oregon State Police, Department of Justice and EPA, as it may have struggled in the past. Koss and Carlough stated that the relationship has been strong and successful.

Koss noted that DEQ has used the Kaizan (streamlining) process as a means of creating a more efficient and streamlined process for enforcement at DEQ. Koss explained that the process improvements led to a reduction of processing time for the entire referral process, from 138 to 37 calendar days. Commissioner Dodson noted that this information is a great way to show that DEQ, and government in general, is working to improve the processes of its work. Deputy Director Hammond added that Director Pedersen is on a statewide process improvement team because of DEQ's work.

Koss introduced two new members of the Attorney General's office, Patrick Flanagan and Stephanie Parent. Parent discussed her background in environmental crimes prosecution, and her current work in the Attorney General's office doing civil enforcement of environmental crimes. Flanagan outlined his background in prosecution and law enforcement, and explained his role at the Attorney General's office in the criminal enforcement of serious environmental crimes. Flanagan attends DEQ's weekly enforcement meetings, and noted that other state agencies are developing enforcement meetings based on DEQ's successful model. Flanagan added that he is also a federal prosecutor. Koss clarified that the Oregon State Police, Department of Justice and DEQ participate in the weekly meeting, which is for enforcement cases that may have a criminal route or proceeding.

**Vice-chair Williamson returned to the meeting at 11:10 a.m.**

### **Lunch and executive session**

The commission met in executive session over lunch from approximately 11:15 a.m. to 12:45 p.m. to consult with counsel concerning legal rights and duties regarding current or potential litigation against DEQ. No representatives of the media attended the session. This executive session was held pursuant to ORS 192.660(2)(f), (h).

Director Pedersen joined the meeting at 12:45 p.m.

**Chair Blosser reconvened the public meeting at 12:50 p.m.**

## **G. Informational and discussion item: Water quality human health criteria for rulemaking**

*Presenters: Neil Mullane, Jennifer Wigal, Kevin Masterson, Gene Foster and Debra Sturdevant*

Director Pedersen explained that his absence at the morning portion of the meeting was due to his presence at the signing of the Klamath Basin agreement in Salem. Director Pedersen commended the cooperation of various state and federal agencies, as well as the cooperation of tribal governments, and the advancement of work in the Klamath Basin.

Neil Mullane, Water Quality Division administrator introduced this item and introduced the presenters.

Deb Sturdevant, water quality standards coordinator, gave an overview of past EQC directives and the revised criteria for the fish consumption rate rulemaking and associated water quality human health criteria. The commission asked clarifying questions. Sturdevant explained the effects of some of the changed criteria and noted that the goal of the revised criteria is to be protective of all Oregonians and people living in Oregon, including those who eat significantly more fish than the U.S. average as established by EPA. Sturdevant explained additional criteria revisions, specifically for arsenic, iron and manganese, and the differences for the three metals. Sturdevant noted that criteria for each naturally-occurring metal would require reduction policies to limit the additional anthropogenic discharges to water. Vice-chair Williamson asked clarifying questions about the sources and limits on arsenic, and program staff responded to his questions.

Jennifer Wigal, water quality standards manager, explained the implementation and regulatory tools for point-source discharge permits, and the work DEQ has done since October 2008 when the commission directed DEQ to investigate available and potential regulatory tools for these standards and rule. Wigal explained the process with the workgroup and stakeholder advisory groups to discuss compliance issues for the rulemaking. Wigal discussed what point sources might be affected by the criteria revisions, noting that DEQ is not able to determine how many facilities will not be able to meet the new criteria until more data is collected. Wigal explained that it is likely sources may exceed the revised standards, and staff are working to evaluate what sources, specifically, may exceed the standards and by how much. Wigal outlined some possible compliance strategies and regulatory tools to meet the revised criteria based on a series of factors and variables. Wigal explained next steps on implementation concerns and paths forward and noted that as DEQ works to develop and implement these tools, it is working to gather data and adapt its approach to addressing the issues as they emerge.

Gene Foster, watershed management manager, described the non-point source issues, and recommendations from the mixed media subgroup of the project workgroup. Foster said that the TMDL program is the major entry point for DEQ to regulate point and non-point sources, and explained the structure and implementation of TMDLs and the state and federal agencies responsible for various parts of these water quality plans. Foster explained proposed TMDL processes, including prescriptive TMDLs to evaluate loadings of pollutants at the landowner scale, and options for allocations and management at a variety of levels from the landowner to the state and federal agencies responsible for the sources. He also discussed possible rule concepts and policy statements that may be in a final proposed rule. Chair Blosser asked if there has been any draft rule language developed yet, and Foster replied that the workgroup is evaluating some draft language and will continue to discuss over the next two months.

Kevin Masterson, agency toxics coordinator, introduced the overview of the toxics prevention and reduction strategy update, and its relationship to the water quality human health criteria rulemaking. Masterson introduced a possible draft commission policy statement, not yet proposed for adoption, related to the development and implementation of the agency toxics strategy to clearly state the strategy's objectives and directive for DEQ. Masterson explained the activities of agency-wide toxics reduction work, including data documentation for identified chemicals, their sources and pathways to Oregon's environment, compiling options from the November 2009 workshop, starting a gap analysis of existing DEQ toxics programs, developing selection criteria for reduction actions and encouraging discussion between key stakeholders and constituencies of the strategy.

Mullane presented a proposed timeline for the development of water quality human health criteria for rulemaking. Mullane noted that the original timeline, developed in October 2008, might be too quick and that DEQ would like to notify the commission of an extension of the original timeline and present a comprehensive rule package in winter 2011, rather than spring 2010. He noted that DEQ is close to final proposed rule language for variances, background metals and prescriptive TMDLs, and could bring rule packages for these elements in October 2010.

Mullane invited three members of the rulemaking's workgroup to comment on the item. Jannine Jennings, EPA Region 10 water quality standards manager, presented comments supporting the leadership and work of DEQ and the state of Oregon to serve as a national example. Jennings stated that DEQ's work is based on sound science and will allow Oregonians to more safely consume fish from Oregon's water. Jennings explained that EPA supports DEQ's moving forward in finalizing the rules to use the tools and implement water quality human health criteria, and setting foundation and framework for reducing toxics in Oregon's waters. Jennings also stated that EPA supports DEQ's revisions of the TMDL program and implementation of prescriptive TMDLs. The commission asked several specific questions for Jennings, who

clarified that EPA understands its role now and into the future and has encouraged the full involvement of appropriate legal and program staff for the development of these standards. William Quaempts, of the Confederated Tribes of the Umatilla Indian Reservation, stated the tribes' appreciation for DEQ's work to reevaluate the water quality human health criteria and fish consumption rate. Quaempts stated the tribes' respectful disagreement with the proposal to extend the process by six months, and the desire to stick to the initial timeline to pass rules in spring 2010. Kathryn VanNatta, of Northwest Pulp and Paper Association, stated her support for CTUIR's position to maintain the initial timeline, and expressed additional clarifying comments related to concerns for the lack of developed rule language for point sources. VanNatta requested that the commission narrow the process and direct DEQ to focus on human health criteria, and delay other parts of the rulemaking until DEQ can adequately address the issues associated with regulation and implementation of non-point sources.

Mullane clarified that DEQ feels it can bring rules for variances, prescriptive TMDLs and background metals in October 2010, and bring the water quality human health criteria rules in mid 2011. VanNatta clarified that her major concern is to maintain the commitment from DEQ to the tribes for revised human health criteria. The commission asked clarifying and specific questions about various tools and compliance issues, and the use and challenges of variances in the short and long term.

Mullane invited four additional members of the workgroup to address the commission. Nina Bell, of Northwest Environmental Advocates, expressed support for the extension of DEQ's timeline and complete rulemaking package at one time. Bell expressed strong support for prescriptive TMDLs, but concern over differing descriptions of safe harbor best management practices and the inclusion of incomplete variance language and implementation tools. Janet Gillaspie, of the Association of Clean Water Agencies, expressed support for DEQ's approach and proposed extension of time to complete a comprehensive rulemaking. Peter Ruffier, city of Eugene, presented additional supportive comments. Dave Cleaver, city of Portland, supported Gillaspie and Ruffier's comments, and that the additional time may allow the group to go slower and get a more effective product in the end.

The commission asked clarifying questions of the workgroup members and DEQ staff. Mullane noted that there is always a concern for resources and that full staffing and momentum did take a while due to limited resources at the project's onset. He noted that he is optimistic that the rules will work and can be done well, and that program staff will develop a schedule based on the revised timeline and continue working with rulemaking workgroup members.

Director Pedersen stated that the decision to bring a request for timeline extension was not a simple or light decision, and that DEQ takes the commission's direction on this work very seriously. Director Pedersen explained that, even with the extension of time, this rule remains a



significant effort for all of DEQ and there will be many tough conversations and discussions as it moves forward.

Chair Blosser called for any additional comment on the item. Lauren Goldeberg, staff attorney for Columbia Riverkeeper, submitted a handout outlining her comments. Goldberg noted Columbia Riverkeeper's concerns for the proposed variance provisions and undefined length of the potential variances. Goldberg noted that without clear definition, the variances could apply across the board and extend indefinitely. She noted a need for more dialogue with the commission for this rulemaking.

Commissioner Uherbelau requested that DEQ work on the variance rule with regular updates to the commission. Chair Blosser asked Mullane for a copy of the detailed proposed schedule for the extended timeline. Director Pedersen confirmed that this topic will be a standard agenda update and informational item at future commission meetings. Chair Blosser and Vice-chair Williamson committed to attending point and non-point source committee meetings, respectively. Commissioner Dodson noted that DEQ is headed in the right direction with this rulemaking, and noted that every day the rules are not in effect impacts human health.

#### ***H. Informational and discussion item: DEQ's draft sustainability plan***

At the commission's direction, this item was postponed until the April 2010 regular commission meeting.

#### **Chair Blosser recessed the commission at 3:50 p.m., until 8:30 a.m. Friday, February 18.**

Vice-chair Williamson, Commissioners Dodson, Uherbelau and O'Keeffe attended an evening dinner with members of DEQ's senior administrative team, but the dinner was not a formal part of the meeting agenda.

#### **Friday, February 19.**

#### **Chair Blosser reconvened the meeting at 8:35 a.m.**

*Prior to the meeting, this item was postponed until the April 2010 EQC meeting*

#### ***I. Informational item: DEQ's annual financial report***

*This item taken out of order*

#### **F. Director's dialogue**

*Presenter: Dick Pedersen*

Director Pedersen presented updates and new information about projects, programs and events of interest for DEQ and the commission. Director Pedersen noted that the commission usually

receives the material for this item right before the meeting to ensure the commission has the most current information.

Director Pedersen updated the commission on the annual report for total dissolved gas standards at dams on the Columbia River; updates to turbidity standards; the E-Cycles program; rulemaking for ambient benchmark concentrations for ethyl benzene, manganese and elemental mercury; increases in federal funding for air quality monitoring; new federal standards for nitrogen dioxide and ozone; greenhouse gas rulemaking; DEQ received the State Controller's Gold Star Certificate for accounting; Deschutes area groundwater protection program; ESCO air monitoring work; three liquefied natural gas projects in development along the Oregon coast; graywater rulemaking; the underground injection control program; DEQ's advisory and work groups; a recent meeting with Lake and Harney Counties about the onsite program; the status and progress of work required by 2007's Senate Bill 737; updates and status, federal stimulus funds and a recent judgment regarding Lakeside Landfill.

In addition to these updates, Director Pedersen presented information about PGE's recent announcement of plans to close to Boardman coal plant sooner than originally presented in 2009. Director Pedersen explained that DEQ would need to review and approve an updated best available retrofit technology analysis before PGE is able to change its timelines and closure plans. Once DEQ receives that information, air quality staff will review the materials and present recommendations for action on emission controls and reductions based on a revised schedule that would still comply with state and federal requirements.

**F1. Action item: Request for concurrence with five reappointments to the Air Toxics Science Advisory Committee**

*Presenters: Director Pedersen*

Director Pedersen introduced the item and noted that the proposed reappointments would bring the advisory committee to its full membership of seven, as the commission approved two new members at the December 2009 meeting.

**Action:** The Oregon Environmental Quality Commission concurs with the director's decision to reappoint five Air Toxics Science Advisory Committee members, as identified in attachment A of this item, for a three-year term, effective immediately.

**Moved:** Vice-chair Williamson

**Seconded:** Commissioner Uherbelau

*The motion passed unanimously.*

*This item taken out of order*

**K. Informational item: Climate change**

*Presenter: Dr. Philip Mote, Oregon State University*

Andy Ginsburg, DEQ's Air Quality Division administrator introduced the item as the first of a series on climate change. Ginsburg introduced Dr. Philip Mote, director of the Oregon Climate Change Research Institute at OSU and co-recipient of the Nobel Prize for his work with the International Panel on Climate Change.

Dr. Mote explained the role and study of the Climate Change Research Institute, and gave introductory comments on the research and science behind climate change. Dr. Mote noted that science is concerned with innovative solutions and scrutiny of established information.

Dr. Mote explained the background, process and role of the International Panel on Climate Change, established in 1998. He gave an overview of the major points from the IPCC report in 2007 regarding global warming, and explained the physics behind solar energy and greenhouse gasses. Dr. Mote presented information on trends and scientific bases for climate change and global warming as the result of burning fossil fuels and other human activities. Dr. Mote discussed some of the counter-arguments for climate change related to scientific data, and the ways in which those statements do not accurately counter the science of climate change or otherwise disprove the science of that work.

Dr. Mote discussed future climate projections, and showed variables and outcomes of different scenarios based on human activity and climate regulations and actions. Dr. Mote presented information specific to the Pacific Northwest that tracked climate change and warming trends from the late 1800s through late 1900s.

Dr. Mote informed the commission about a new climate change model at OSU that uses the participation of thousands of volunteers working on regional modeling across the world. Dr. Mote discussed some local and regional impacts of climate change, and the ways they are related to human activity and how they may affect human activity in the future. Dr. Mote presented his conclusions that global warming is real, and issues in the Pacific Northwest are dominated by hydrologic changes.

The commission discussed the affects of warming with Dr. Mote, and some of the relationships between human activities and warming trends. Director Pedersen stated his acknowledgement to Dr. Mote and his work for the state of Oregon on climate change issues.

*This item taken out of order*

**J. Informational and discussion item: Budget and legislative updates**

*Presenters: Greg Aldrich and Jim Roys*

Greg Aldrich, government relations manager, distributed a handout of talking points and gave an overview of the agenda item. Aldrich discussed the current budget situation for the state of Oregon, and possible legislative actions to resolve a budget shortfall. Aldrich updated the commission bills relevant to DEQ in the current special session, and noted that it is the last day for policy bills to pass, and the Ways and Means committee will meet and discuss financial impacts for bills, and the special session will likely end Feb. 28.

Aldrich discussed the timeline for policy and legislative development for the next regular Legislative session in 2011. He explained that DEQ is now beginning the budget development process and will develop a base budget, reduction packages, restoration options for critical work and budget policy packages for new work and new funding while retaining agency emphasis on toxics, water and climate change work. Director Pedersen added that the 2011-13 state budget will likely have a \$2 billion gap in revenue, which would mean a reduction in spending of 11 or 12 percent for the state.

The commission discussed funding and budget concerns for the current and next biennia, and Director Pedersen reminded the commission that a new governor in 2011 will have an opportunity to set priorities for spending and state agencies' budgets. Aldrich explained that he will present a legislative and budget update at the April EQC meeting, and Jim Roys, budget manager, will present the annual financial report. Aldrich will continue to send weekly e-mail updates to the commissioners through the end of the special session.

Vice-chair Williamson asked for a report to the commission from the information technology staff at DEQ. Director Pedersen noted that the information technology group could present to the commission, and he will encourage that discussion at the April or June meeting, and relate to the Business Systems Division, technology and development at DEQ. Commissioner Dodson requested information on the Kaizan process as part of the systems discussion and future budget development and business efficiencies.

#### **L. Informational and discussion item: Developing Oregon's Integrated Water Resource Strategy**

*Presenters: Brenda Bateman, Oregon Water Resources Department, and John Jackson, chair of the Oregon Water Resources Commission*

Neil Mullane introduced John Jackson, chair of the Water Resources Commission, and gave an overview of the agenda item. Mullane noted that he and Christine Svetkovich, water quality policy analyst, are available for questions that relate to DEQ's role and responsibilities for the strategy. Jackson presented information on his professional background and context for the strategy and presentation. Jackson noted that several years ago the Water Resources Commission noted that there is no comprehensive and long-range water management plan for the state.

Jackson discussed the planning process so far, and the desired outcomes for the integrated water resources strategy. Jackson stressed that the strategy is a partnership among Oregon's natural resource agencies and each agency's respective commissions and will be a guiding framework for statewide water resources and including issues on water quality, water quantity and ecology and habitat concerns. Jackson encouraged the commissioners to attend the open houses around Oregon, and to be involved in the process and development of the strategy.

Brenda Bateman, Water Resources Department senior policy advisor, noted that while Phil Ward, Water Resources Department director, was not able to attend because of a commission meeting, he wanted her to express his thanks for the staff cooperation from DEQ for the process and work group. Bateman discussed a draft work plan and open house document. She noted that the Water Resources Commission distributed issue papers in fall 2009, received public comment and now staff are working to incorporate comments and suggestions and issue updated papers later this year. Bateman discussed the open houses planned for spring and summer 2010, noting that the objective is to provide the public with information, collect the public's suggestions and ideas and engage in facilitated community discussions. Bateman reiterated Jackson's invitation to attend the open houses and participate in the process as a partner agency.

The commission discussed outreach mechanisms for the open houses, strategy development, the commission's role in the process and Director Pedersen expressed his enthusiasm for the strategy and collaborative agency work. Bateman and Jackson responded to the commission's questions and comments, and discussed the challenges and opportunities for the strategy. Director Pedersen noted that the strategy is a leadership opportunity, and that the commissions have the chance to look forward and build strategies and policy that support long-range planning efforts.

Chair Blosser invited Janet Gillaspie, from the Association of Clean Water Agencies, to comment on the agenda item. Gillaspie expressed support for the strategy, and encouraged the agencies to add the option of recycled water use. Vice-chair Williamson recommended that staff and commissioners use the Klamath Basin project as a model for solving significant water issues. He also noted that Jackson is the best person in the state to lead this effort, and the commission will work with the Water Resources Department and Commission. Christine Svetkovich noted that she and other DEQ water quality managers and staff will be attending the meetings and can gather and distribute information on the issue.

#### **N. Informational and discussion item: Willamette Valley field burning**

*Presenters: Andy Ginsburg, David Collier and Brian Finneran*

Andy Ginsburg, Air Quality Division administrator, introduced the agenda item, his co-presenters and gave an overview. Brian Finneran, senior air quality specialist, presented information on the Willamette Valley field burning program and process for pending

rulemaking. Finneran described background information for the item, including history, purpose, usual location and historical trends, associated air quality issues and recent legislative actions to regulate field burning.

Finneran explained that the commission delegates the management of the field burning program to the Department of Agriculture, and that DEQ provides some oversight through supply of monitoring equipment and maintenance of field burning rules. In 2009, the Legislature adopted Senate Bill 528, which effectively bans field burning in the Willamette Valley. The bill allows burning of 15,000 acres of steep terrain for specific species, and allows exemptions under emergency clauses. Finneran explained that DEQ is revising rules to implement changes from Senate Bill 528, and the commission would be responsible for establishing what is an emergency burn and what constitutes a critical non-burn area. Finneran explained the advisory committee membership, process and role for the rulemaking, and identified the two main issues of the pending rulemaking.

Finneran discussed the challenges of implementing the language of Senate Bill 528, and the difficulty in defining extreme hardship and its ability to outweigh the risks to public health based on the language of the bill. The legislation did not include guidance or definitions. Finneran noted that the advisory committee did not reach consensus on definitions and that DEQ's goal is creating a rule that is consistent with the intent of the bill without being overly restrictive and can be practically implemented by DEQ and EQC. Finneran explained the parameters used to develop definitions for extreme hardship, and the commission discussed the parameters and designation process. Larry Knudsen, EQC legal counsel, clarified that it is not unusual for the Legislature to delegate program work without specific definitions, and that this situation would mean that extreme hardship would need to be defined and implemented by DEQ in a reasonable way consistent with common use.

Dan Galpern, of Western Environmental Law Project, noted that the Legislature specified extreme, not minor, hardship, and his group feels that DEQ's proposed definition is too loose. Roger Beyer, of the Oregon Seed Council, stated that his group feels that the proposed definition is too restrictive. Ginsburg noted that there is a diversity of opinion for the definitions, and that the end result must satisfy the Legislature's intent and be implementable.

Finneran explained the second element of the rulemaking, which is determining how economic hardship outweighs the public health risk. Finneran noted that all burning has risks, but they could be managed with mandatory burn plans with specific provisions to limit exposure. Finneran closed by explaining the outline for the potential field burning rule and DEQ's role in the process.

Galpern noted that DEQ's framework and proposed language does not address the public health concerns behind Senate Bill 528, and some elements of the rule language do not specify certain definitions and that the proposed rule language does not meet intent of bill. Beyer stated that the proposed dates of July 15 and April 1 to submit applications would mean the process is not in line with the seed growers' needs. Ginsburg noted that DEQ can change the date, but the stress on the other side is the burn season itself, and limitations of the required metrological conditions to allow burning.

The commission asked Ginsburg and Finneran clarifying questions about elements of the emergency burning provision of the planned rulemaking.

### **Commissioner Dodson left the meeting at 3:10 p.m.**

Finneran explained that the rulemaking also refers to critical non-burn areas and names power transmission lines but allows any designation of critical non-burn area. DEQ will propose a 150-foot buffer, 75 feet on each side, for power transmission lines and with a 500-foot buffer for schools, hospitals and regional airports. The restrictions for school areas would only apply when school is in session, and the restrictions for airport areas would only apply when there are regularly-scheduled flights. The commission asked for clarification on the buffer zone determinations, and the presenters explained the reasoning behind the buffer zones and proposed rules.

Finneran explained the language for applying the definition of critical non-burn areas is somewhat unclear, and legal counsel is evaluating the application of the Willamette Valley field burning statute and rules beyond the Willamette Valley. DEQ recommends further investigation to see if rulemaking is needed for this part with a report to the commission later this year. DEQ would start with critical non-burn areas in the valley and get that experience before establishing rules that apply outside of the valley. Galpern and Beyer expressed their views on this last issue, and the commission discussed the matter with the presenters and panelists.

### **O. Public forum**

**Ramsey McPhillips**, from McMinnville and a neighbor of the Riverbend Landfill, presented the commission with information on recent activity at the landfill, noting a breakage of landfill liner with release of leachate into a stream in a floodplain on McPhillips' land. McPhillips encouraged the commissioners to visit the landfill, to view the mountain of garbage in the landfill and the abandoned trailers and houses on property the landfill purchased and then left unimproved. The landfill is under review to expand, and the land use is tied to policy and politics and not to the facts on the landfill. McPhillips stated that landfills kill jobs and have made that area of Yamhill County a pocket of abandoned and derelict property. McPhillips explained that EQC has the

opportunity to make policy, appoint a committee or take other action to look into the issue at Riverbend Landfill. McPhillips' explained that his grandfather was an environmental leader in Oregon, and was the chair of the Sanitary Authority's board equivalent to EQC. McPhillips urged the commission to manage waste in a way that creates jobs and not creating and maintaining landfills that cut jobs, and to join him in ending the use of landfills in Oregon.

Commissioner Uherbelau asked for clarification on DEQ's role in landfills and Director Pedersen stated DEQ's role to permit solid waste facilities, and that counties and other local government bodies make decisions on land use considerations. McPhillips stated his intent to continue the work against the landfill, along with the group of neighbors and organizations who have gathered around this issue. Chair Blosser noted that the Legislature meets next year and has the opportunity to develop a statewide policy on zero waste through a far-reaching waste management bill. McPhillips invited the commissioners to tour an alternative landfill to see the possibilities for waste management. Chair Blosser asked McPhillips for draft language or a legislative concept for review and understanding of what that kind of bill would look like.

## **P. Commissioner reports**

### **Vice-chair Williamson**

- He is the chair of the industrial stormwater advisory group, which is making good forward progress.
- Attended, with Director Pedersen, the ribbon-cutting for the Albany-Millersburg wastewater treatment facility.
- Presented at a recent wastewater treatment plant conference in Salem about making facilities more sustainable. This conference discussed best technologies for wastewater treatment, and Vice-chair Williamson explained that a best technology is for facilities to accept wastes and create biogas. He noted that a wastewater plant in California is making 120 percent of its needed energy and feeding back into the energy grid using this method. Director Pedersen stated that DEQ can evaluate potential funding streams related to these technologies, as well as the nutrient standards and state revolving loan fund model to move the conversations forward.
- The Oregon Watershed Enhancement Board is pushing for evaluations of ecosystems services under Senate Bill 513, and is interested in finding funding for more OWEB projects through that bill for carbon sequestration work. Vice-chair Williamson explained that OWEB wants DEQ to talk with other OWEB-funded agencies for development of a comprehensive budget request package.

There were no other commissioner reports.

**Chair Blosser adjourned the meeting at 4 p.m.**