

**Minutes of the three hundred and fifty-fifth
Oregon Environmental Quality Commission meeting
April 29-30, 2010**

**Red Lion Hotel Coos Bay
1313 N. Bayshore Drive, South Umpqua Room
Coos Bay, Oregon**

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

Vice-chair Williamson convened the meeting at 8:02 a.m.

A. Action item: Review and adopt minutes of the February 18-29, 2010, regular meeting

The commission reviewed the minutes from the February meeting and found typographical errors and a passage for which clarification was necessary.

Action: Approve the minutes from the February 18-19, 2010 regular meeting with the corrections as noted.

Moved: Commissioner O’Keeffe

Seconded: Commissioner Dodson

The motion passed unanimously.

B. Informational item: Status update for the Umatilla Chemical Agent Disposal Facility
Presenters: Joni Hammond and Steve Potts (by phone)

Joni Hammond, deputy director, introduced the item and Steve Potts, chemical demilitarization program staff, presented an update on activities at the Umatilla facility. Potts noted that two workers were recently exposed to mustard agent, notified appropriate agencies and stopped operations until a full investigation could be completed. One worker showed signs of mustard agent exposure, and the facility will conduct new training for staff. Potts explained current activities at the facility, including several proposed permit modifications.

Hammond explained that national legislators ratified a chemical weapons treaty in April 1997, which started the international push to destroy all chemical munitions by April 2012.

Commissioner Uherbelau asked Hammond if she thought it was possible to meet the 2012 deadline, and Hammond replied that it is possible, and she is meeting monthly with staff to achieve this goal, but it will require additional work from the U.S. Army and contractors to get materials to DEQ in a more readable format to make sound decisions on a faster timeline.

Vice-chair Williamson asked for an update on Rich Duval, administrator for the chemical demilitarization program, and Hammond noted he is on leave and has chosen to take a natural resources position with DEQ when he returns and Potts will serve as the program administrator.

C. Action item: Clean Water State Revolving Fund temporary rules

Presenters: Neil Mullane and Judy Johndohl

Neil Mullane, Water Quality Division administrator, introduced the temporary rulemaking item and Judy Johndohl, water quality community and program assistance manager, explained that DEQ must amend its Clean Water State Revolving Fund rules to be eligible for federal money with new requirements. Johndohl noted that DEQ is eligible for \$23 million in capitalization grants for the program. Johndohl explained the different requirements for 2009 and 2010 funding, and explained that DEQ is working on a permanent rulemaking for October 2010.

Johndohl stated that the handout distributed at the meeting is a correction to a calculation on page 17 of the attachment, which Larry Kndusen, commission's legal counsel, explained and provided updated language for the recommendation and EQC motion.

Action: Adopt the proposed rules as presented in attachment A, with the amendment on Bates stamp page C 000020, an amendment to 13(a)(b) of rule 65, and the findings as presented in attachment B of this staff report.

Move: Commissioner Uherbelau

Second: Commissioner O'Keeffe

Passed unanimously

D. Informational item: Lower Umatilla Basin groundwater management area

Presenters: Mitch Wolgamott and Phil Richerson, DEQ, and Ray Jaendl, Oregon Department of Agriculture

Mitch Wolgamott, eastern region administrator, introduced the item, and explained that Phil Richerson, DEQ hydrogeologist, has been working on the trending analysis for nitrate levels and other concerns for the Lower Umatilla Basin groundwater management area. Richerson explained what a groundwater management area is and background information on the nitrate concerns in the Lower Umatilla Basin groundwater management area. The commissioners asked questions on the sources and levels of nitrates and the function of the action plan. Richerson explained the five identified sources of nitrates in the area, and methods of assessing success and progress for the area and plan.

Richerson presented information on the nitrate trends identified in sampling events in 2001, 2005 and 2009. He explained that over half the wells in the sampling area show a significant increase, and that more wells are showing increasing, rather than decreasing, trends but at a slower and slower rate each year. Richerson noted that there is an opportunity for DEQ to use artificial recharge processes to improve water quality and quantity in the area.

Ray Jaindl, natural resource administrator from the Oregon Department of Agriculture, presented materials related to the groundwater management area. Jaindl presented summary points, based on the data collected and presented by DEQ, and noted that economics and rising costs of goods have contributed to decreasing rates of contamination. Commissioner Uherbelau asked why agricultural sources are not required to report, and how the sources would respond to any regulation. Jaindl explained that the sources are not likely to respond well to the requirements, and that ODA is not able to analyze whatever data the sources submitted. Jaindl presented recommendations to continue improvement of rates of nitrogen leaching into groundwater in the area.

Wolgamott invited Bob Levy, chairman of the Board of Agriculture, James Ray, mayor of Irrigon, and Jerry Breazeale, city manager of Irrigon, to comment on the issue. Breazeale presented information on the water and nitrate concerns in Irrigon, and explained that the people of Irrigon have spent over \$8 million to control nitrate issues. He stated that irrigated agriculture is the only contributing source to the nitrogen contamination in the area. Ray seconded Breazeale's concerns, and explained that there are major concerns about odors from food processing plants in the area.

Levy, a farmer from the Hermiston area and chair of Board of Agriculture and former committee member for the Lower Umatilla Basin groundwater management area, explained that the Board of Agriculture is concerned with the interface between agriculture and communities, environmental degradation and human health and safety. Levy explained that the board wants to assess the nature of the problem, trends and long-term fixes while addressing the short-term concerns for public health and safety.

The commission discussed DEQ's current and future opportunities for assessing and improving the groundwater, and drinking water, in the Lower Umatilla Basin groundwater management area. Director Pedersen noted that DEQ has a strong interest but a lack of staff on this project, so it is an opportunity for DEQ to collaborate with public health agencies and others to move work forward.

E. Informational item: Senate Bill 737 project update

Presenters: Neil Mullane, Jennifer Wigal and Dr. Bruce Hope

Neil Mullane, Water Quality Division administrator, introduced the item and Jennifer Wigal, water quality manager, presented background information on Senate Bill 737 and its connections to all DEQ toxics programs. Wigal described the planned process for rules and plans required under the bill, and the timeline for those elements. The commission asked questions about the content and scope of the reduction plans, and requested that the information shared with the public connects to the actions and lives of consumers.

Dr. Bruce Hope, DEQ toxicologist, presented detailed information on the trigger levels that will be presented to the commission in June for proposed adoption. Hope clarified that trigger levels are not standards. Hope explained the process for selecting and using trigger levels, and noted that DEQ's lab is working on the analytical methods for this process. Commissioner Uherbelau asked if DEQ plans to resample effluent in later years if the chemicals are not found in the first year of sampling, and Wigal explained that the original legislation does not address this issue, and DEQ is working on a plan to sample beyond the one-year scope. Hope noted that DEQ is selecting, not developing, trigger levels using a multi-step process with peer-review by a six-person panel and public input.

Vice-chair Williamson expressed concern about a disconnect between the regulations asked of the wastewater plants and the real sources of chemicals. Director Pedersen noted that Senate Bill 737 is one piece of DEQ's overall toxics work, and DEQ will work to tie the needed reductions together and connect with the public through outreach and education.

F. Informational item: Water quality standards for human health

Presenters: Neil Mullane and Jennifer Wigal

Neil Mullane, Water Quality Division administrator, introduced the item, and thanked Vice-chair Williamson and Chair Blosser for their participation during the process. Jennifer Wigal, water quality manager, discussed the rulemaking process, and the work DEQ has done to finalize the scope of the proposed rule. Wigal explained that EPA must approve DEQ's 2004 human health criteria by June 1, 2010, as required under a consent decree from litigation. Wigal explained that if EPA disapproves any part of the standards, DEQ will have 90 days to correct the deficiencies and EPA must promptly prepare replacement water quality standards. Wigal stated that DEQ is committed to its rulemaking process and the need to stay on schedule to adopt rules by July 2011.

Wigal presented proposed topics for rulemaking and explained the workgroup schedule and draft agenda items for consideration and discussion. Wigal said that DEQ is researching the expected effects of the proposed revised criteria and presented information on the application and impacts of the draft rules. Wigal discussed the work group process, implementation plans for any proposed rules, revisions to DEQ's anti-degradation policy and the work of a subgroup formed to

discuss wastewater treatment facility pretreatment options and ideas. Wigal explained that DEQ will hold workgroup meetings in May, present at the June EQC meeting and have additional workgroup meetings by June 30. Wigal noted that many stakeholders want to revise the requirements for arsenic, mercury and manganese in the short term.

Lunch and executive session

The commission met in executive session over lunch from approximately 12:15 to 1:45 p.m. to consult with counsel concerning legal rights and duties regarding current or potential litigation involving DEQ. No representatives of the media attended the session. This executive session was held pursuant to ORS 192.660(2)(f), (h).

AA. Action item: Extension of settlement agreement (addendum)

Presenter: Neil Mullane

Neil Mullane, Water Quality Division administrator, explained the item and presented information on the content and background of the material.

Action: Approve the amendment to the settlement agreement, attachment A of this item, and authorize Director Pedersen to sign the addendum on behalf of the commission.

Move: Commissioner O’Keeffe

Second: Commissioner Dodson

Passed unanimously

This item was taken out of order

I. Informational and discussion item: EQC retreat

Presenter: Director Pedersen

Director Pedersen discussed DEQ’s planning activity to prepare for the commission’s November 2010 retreat to review the agency’s strategic directions. Director Pedersen explained that the planning team represents every division, region and program within DEQ, and will create materials and briefings to prepare the commission for its retreat. The strategic directions will be developed after the retreat, based on the commission’s discussion and direction, and then brought back to the commission for approval in 2011. Director Pedersen noted that it is crucial for DEQ to measure progress of environmental successes, and strategic directions must include methods to measure and account for success.

Director Pedersen explained that DEQ understands that the entire process must incorporate the economic challenges faced by Oregon, and will require new and different methods of thought and work processes for DEQ to be successful. Director Pedersen explained that the process is looking at DEQ 20 years in the future, and Chair Blosser and Vice-chair Williamson have agreed

to work with the planning group. The focus of this group is to prepare for the retreat by getting information to the commission for a productive conversation about the direction of DEQ and its ability to protect human health and the environment.

G. Informational item: Budget and legislative updates

Presenter: Jim Roys

Jim Roys, budget manager, presented an update on DEQ's budget for the current and future biennium. Roys explained the process for developing DEQ's 2011-13 legislative agenda, and reviewed the development timeline. Roys reviewed DEQ's draft legislative concepts and policy option packages. Director Pedersen explained that many of the legislative concepts came from past legislation and the desire to engage fully with the stakeholder process, which is why there are many placeholders in the draft. Roys explained that DEQ has until July 14 to finalize the legislative concepts.

Roys explained the development of DEQ's base budget for the 2011-13 biennium, noting that revenues for many programs have been low and will continue to be low through 2011-13. DEQ has discussed this issue with the Department of Administrative Services and Legislative Fiscal Office, and may be able to use vacancy savings as an alternative to cutting positions now and asking for restorations in later biennia. The commission asked clarifying questions on the structure and use of this option.

Roys presented DEQ's policy option packages, some of which have related legislative concepts, and presented DEQ's budget reduction options, as requested by the Governor's Office. Commissioner O'Keeffe asked what the forecast is on lottery funds, and Roys responded that the lottery funds have been dropping in the same gradual decline pattern as general funds. The commission invited Paul Siebert, legislative fiscal analyst, to comment on the future of lottery funds, and he stated that Measure 66, which controls lottery funds, is up for reauthorization and has a citizen's ballot initiative to re-appropriate lottery funds at different rates.

Roys explained that the next step for the commission will be to review the final draft of legislative concepts, policy option packages and base budget at the June meeting. Director Pedersen noted that this year will have a change in gubernatorial leadership, and DEQ will keep the commission posted on any budget changes based on the political changes.

H. Informational item: Annual financial report

Presenter: Jim Roys

Jim Roys, budget manager, gave an overview of the annual financial report, and noted that the annual review of DEQ's financial report is one of the commission's key performance measures.

Roys discussed the three sections of the financial report. Roys explained that DEQ's programs mostly have "green light" satisfactory ending balances and budget information, and only five received a "yellow light" cautionary rating.

Roys reviewed the key financial information section of the report, and explained that the spotlight rating of green, yellow or red related to the ending balances of the program and status of satisfactory, cautionary or need for immediate correction. Director Pedersen explained that DEQ reviews the quarterly budget forecast for the state and can react to that changing information. Director Pedersen noted that it is difficult to adjust employee assignments from month-to-month based on revenue changes, and it requires balancing at DEQ to maintain service delivery and retain employees and skill sets. Roys noted that DEQ continues to plan and manage its finances, and work within the funds it has.

J. Informational item: Director's dialogue

Presenter: Director Pedersen

Director Pedersen updated the commission on DEQ issues and actions. Director Pedersen explained that DEQ needs a commissioner to replace Commissioner Uherbelau on DEQ's audit committee, as her term on that committee expires in June. Director Pedersen also informed the commission that Vice-chair Williamson has been asked to serve as the commission's representative on a policy advisory committee for the Oregon Transportation Commission for the next 18 to 24 months.

Director Pedersen added one item, not listed in the agenda item report, related to the town hall-style meetings at EQC meetings. Director Pedersen noted that staff summarize issues and respond directly to people who comment about their concerns, and DEQ will provide copies of those follow-up actions to the commission. Vice-chair Williamson added that one issue discussed at the town hall meeting last night was a requirement to inspect septic systems close to water bodies, and that is a clear need for Oregon's small and coastal lakes.

Vice-chair Williamson recessed the meeting at 4:36 p.m. until 8 a.m. Friday, April 30.

Friday, April 30.

Vice-chair Williamson reconvened the meeting at 8:01 a.m.

K. Public forum

DEQ established a telephone conference line at its Portland headquarters for members of the public to offer comment remotely. That conference line was staffed in room EQC-A at 811 SW 6th

Avenue, Portland, by Nina DeConcini, northwest region administrator, and William Knight, public affairs specialist.

1. Kathryn VanNatta, Northwest Pulp and Paper Association

VanNatta raised concerns and offered comment on the development process for the water quality human health toxics standards, and that the work on point sources is narrowing as the nonpoint source discussion is expanding. VanNatta stated that the NWPPA has concerns with the implementation date, and broad conversations have not been possible for many aspects of the standards. VanNatta stated that NWPPA is supportive of DEQ rulemaking in two parts, with the metals standards set soon, and the antidegradation and other policy work later. VanNatta stated that the process is becoming more contentious and that committee members and stakeholders are feeling strained for time. VanNatta noted that she remains eternally hopeful that the standards will happen and be successful.

2. Sharon Genasci, Northwest District Association health and environmental committee chair – *by conference phone*

Genasci thanked the commission for the time to address the air toxics benchmarks, and noted her work in northwest Portland related to air quality for 15 years. Genasci submitted a written copy of her comments, to be included with the public record. Genasci noted several concerns with the proposed air toxics benchmarks and explained that a member of the science advisory committee had a conflict of interest that puts all findings of that committee in question. Genasci explained that three neurotoxins are in the airshed in northwest Portland and there are no levels of safe exposure. Genasci noted that reducing benchmarks to California's level is a positive step, but it does not address the fact that there are no safe levels of exposure and skirts the issue of the benchmark actually being protective of human health. Genasci asked the commission to open a full discussion, revision and reformation of the science advisory committee to reinvestigate the benchmarks and protect citizens from pollution.

3. Ramsey McPhillips, Waste Not of Yamhill County – *by conference phone*

McPhillips explained that he is creating a coalition to legislate against methane gas in landfills. McPhillips read the *Waste Not* legislative concept statement. He also noted that in a DEQ-facilitated meeting with Riverbend Landfill, Waste Management, the landfill operator, stated it will make a concerted effort to remove all methane-generating material from its landfills. McPhillips asked if the letter made it into discussion at the commission meeting, and Vice-chair Williamson noted that the letter has been received and will be taken under consideration. Director Pedersen clarified that DEQ's deadline to submit legislative concepts has passed but there are many ways for legislative concepts to be submitted through legislators or other organizations.

4. Wayne Morgan, resident of Greenacres, Coos County south of Coos Bay

Morgan commented that the air quality in Green Acres has degraded in recent years, and it is due to burning of plastic in burn barrels and piles. Morgan explained that local volunteer fire departments are first responders to open burn complaints, which are often related to the burning of health-threatening and dangerous materials. Morgan explained that DEQ air quality employees are not available outside of business hours, and residents are burning plastics and other hazardous waste. Morgan requested that DEQ hold public meetings at a grange, fire hall or other community space, to inform the public about the health effects of burning plastics. Commissioner O’Keeffe asked if Morgan has communicated with the county on his concerns, and Morgan responded that the county has not been responsive to enforcement. Director Pedersen thanked Morgan for his testimony, and noted that DEQ does try to work with local fire districts across the state, and appreciates the suggestion to meet with local communities to provide additional educational tools.

L. Action item: Infrastructure State Implementation Plan changes

Presenters: Andy Ginsburg and CarrieAnn Capp

Note: Due to a technical error, the first minute of the audio for this item did not record, and it consisted of brief staff introductions and remarks.

Andy Ginsburg, Air Quality Division administrator, introduced the item and gave an overview of the process. Carrie Ann Capp, air quality planner, presented the information for the proposed revisions and rule changes. Commissioner Uherbelau asked what the justification is for the revisions, and Capp and Ginsburg explained the process EPA uses to adopt new standards based on scientific findings and research.

Capp explained the proposed rule changes, and discussed specific elements of the proposed rules with the commissioners. Commissioner Uherbelau commented that the formatting for rule changes is not always clear. Director Pedersen noted that, for future rulemakings, DEQ could provide the commissioners with an executive summary of rule changes, in addition to the staff report and rulemaking materials, and a color copy of the revised rules to clearly show the formatting for changes and deletions for the commission’s consideration.

Action: Adopt proposed rule revisions and report on interstate transport as presented in attachments A and B of this item, and authorize DEQ to submit them to the U. S. Environmental Protection Agency as revisions to the Oregon State Implementation Plan.

Move: Commissioner O’Keeffe

Second: Commissioner Dodson

Passed unanimously

Item M was removed from the agenda prior to the meeting

M. Action item: Air toxics benchmarks

This item was taken out of order

R. Informational item: VirtualPaint demonstration

Presenters: Keith Andersen and John Taylor

Keith Andersen, western region administrator, introduced John Taylor, small business technical assistance and EcoBiz specialist, and presented an overview of the item. Taylor presented information about VirtualPaint equipment and the workshops DEQ is conducting to help auto body shops subject to new NESHAP standards. VirtualPaint, which consists of a screen and a “virtual” paint gun, is a training tool for applying paint in ways that comply with regulations, reduce waste and protect human health and the environment. Taylor explained that DEQ has held workshops around the state, which have been successful.

Taylor demonstrated the VirtualPaint training equipment, and invited commissioners to try it out. Taylor explained that the major benefit of VirtualPaint is that there are no health risks associated with the training, unlike the traditional training methods that place a person in a booth with physical paint that emits chemicals.

Director Pedersen thanked Taylor for his work, and noted that this equipment is a great example of DEQ’s technical assistance, education and outreach processes.

N. Informational item: Climate change

Presenter: Jessica Shipley, the Pew Center on Global Climate Change

Andy Ginsburg, Air Quality Division administrator, introduced Jessica Shipley, a solutions fellow at the Pew Center on Global Climate Change, and noted that this is the second presentation in a series of informational items related to climate change.

Shipley explained the background, role and functions of the Pew Center on Global Climate Change. She discussed the international agreements for climate change and two parallel tracts of international climate change work. Shipley presented an overview of the U.S. climate and energy policies, and noted that there are three interrelated challenges: the need to drive continued economic growth, reduce vulnerability to energy-related climate threats and reduce risk of climate change and other environmental threats. Shipley explained that the Pew Center believes that cap-and-trade is a key element of a solution that meets the three challenges of climate change and energy.

Shipley discussed state-level policy actions, and noted that states are the laboratories of good policy and it is important for states to keep innovating on solutions to climate change. Shipley presented some recent highlights of state actions, and maps showing states' work on climate change and energy. Shipley explained California's cap-and-trade regulation and associated action items as one example of actions taken by a state that go beyond federal standards and regulations. Shipley discussed challenges and opportunities for federal climate action in the senate and house, and discussed the key roles for states in climate and energy policy.

The commission discussed the benefits and challenges associated with cap-and-trade strategies at the state and national level. Ginsburg explained that there is a preemption clause in draft legislation, and the clause may prohibit EPA and states to take actions on climate change for defined periods of time. Shipley noted that the center is working on a middle-ground solution that puts state cap-and-trade programs on hold until 2017 but does not have other preemption clauses or language. Director Pedersen noted that a bill to operate cap-and-trade in Oregon was withdrawn due to a lack of clarity over Oregon's role in the federal climate change and energy policy arena.

O. Informational item: Heat Smart program

Presenters: Andy Ginsburg and Rachel Sakata

Andy Ginsburg, Air Quality Division administrator, introduced Rachel Sakata, air quality planner, and explained that the item is informational and related to the Heat Smart program and rules. Sakata explained that the Heat Smart rules implement Senate Bill 102, which protects human health and the environment by accelerating the process of changeover from inefficient uncertified residential woodstoves to more efficient certified residential woodstoves. Sakata presented information on the daily and annual standards for fine particulate, and communities in Oregon that currently or may soon violate the standards. Sakata discussed the main components of the Heat Smart program and rules, and ways DEQ will provide education and outreach to communities about the program and rules. Sakata noted that the requirement to remove and destroy the uncertified stoves becomes effective Aug. 1, 2010, and DEQ will be working with realtors and residents for education and outreach on the requirement.

Sakata discussed the advisory committee process for the program and rule development, committee recommendations to keep the removal process simple and enforce the current used woodstove law. Sakata explained next steps, and noted that DEQ plans to draft rules for public comment and then bring proposed rules to the commission for consideration in October 2010.

P. Action item: Beneficial use rules

Presenters: Wendy Wiles and Tom Roick

Wendy Wiles, Land Quality Division administrator, introduced the item and thanked Tom Roick, land quality policy analyst, for his work to prepare these proposed rules. Roick explained the elements of the proposed rules, and addressed questions from the commission regarding the process and content of the rulemaking.

Roick noted that stakeholders are satisfied with the rules as proposed, and this rulemaking addresses concerns about the beneficial use of dredged materials. Roick explained the comments received and DEQ's responses through the rulemaking process, and noted that a large number of comments required clarification on what the rules would and would not address.

Commissioner Uherbelau commented that the rule is imprecise on the definitions of some terms, and it may cause problems for DEQ when sources try to interpret the rules. Roick noted that the terms are not defined in the rule, but the rule does include performance criteria. Commissioner Dodson asked for clarification of potential risks for runoff and additional concentration of amounts or levels of naturally occurring materials.

Action: Adopt the proposed rules for the beneficial use of solid waste as presented in attachment A of this item.

Move: Commissioner Dodson

Second: Commissioner O'Keeffe

Passed unanimously

Director Pedersen commended Roick for his work, spanning much longer than the past two years, to advance this rulemaking and beneficial use determination and processes. Pedersen stated that DEQ will engage in outreach, education and discussion on the implementation of the rules.

With the commission's approval, Kathryn VanNatta, Northwest Pulp and Paper Association, commented that DEQ has worked closely with the forest product industry throughout the process to address many concerns. VanNatta noted that concerns remain for the categorization of certain wood products and biomass, and asked DEQ to be sensitive to the definitional issues that may occur.

Q. Informational and discussion item: Oregon Solutions

Presenter: Steve Greenwood, National Policy Consensus Center and Oregon Solutions

Steve Greenwood, deputy director of the National Policy Consensus Center and co-chair of the Oregon Solutions project, presented an overview of the structure and process used by the National Policy Consensus Center and the relationship between the center, Oregon Solutions project and DEQ. Greenwood explained that he served as DEQ's western region administrator 15

years ago, and the state faced budget constraints similar to today's economy. DEQ's response, at that time and today, was to evaluate ways to engage the community in collaborative efforts and partnerships to accomplish things DEQ was not able to achieve alone. One of those ways was to provide .5 FTE of staff time to serve on the Oregon Solutions project. Greenwood explained that the partnerships gave DEQ the opportunity to become a partner, and not an external regulatory agency, in the community and get projects done too.

Greenwood discussed some of the projects that Oregon Solutions has worked on and has been able to provide connections between disparate entities. Greenwood expressed thanks for the strong partnership between DEQ and the Oregon Solutions project, and a desire to continue the partnership. Director Pedersen explained that DEQ is committed to continuing to work with Oregon Solutions for the betterment of the environment, project partnerships and community relationships.

Commissioner Dodson asked if Oregon Solutions could collaborate with DEQ, or others, to address concerns that area residents presented at the town hall meeting about issues in Irrigon. Greenwood stated that Oregon Solutions is open to discussing projects and partnerships, and can engage with DEQ on that issue. Commissioner O'Keeffe noted that she strongly supports Oregon Solutions, and they achieve wonderful results and partnerships.

The commission recessed at approximately noon for an informal lunch with DEQ staff and Greenwood, and reconvened the public meeting at 1:05 p.m.

Following lunch, the commission invited Mary Peveto, resident of northwest Portland, to present public comment on DEQ's air toxics benchmarks.

Peveto thanked Director Pedersen for removing item M, a rulemaking on air toxics, from the meeting agenda to allow for additional public comment on the item. Peveto submitted a written copy of her comments into the meeting record and to the commissioners. Peveto presented her comments on her experience with manganese, and explained that she supports the work DEQ's science advisory committee has done but that the benchmarks recommended are not protective of human health. She noted that the benchmarks do not capture the risks associated with exposure of people, especially children, who live in DEQ-identified toxics hotspots, nor do they address localized and short-term exposure at very high levels. Peveto asked the commission to consider a dual standard that addressed annual averages and spikes of short-term exposure. Peveto's statements were entered as public comment for the commission meeting and formal public comment on the rulemaking for ambient benchmark concentration standards.

S. Informational item: Sustainability at DEQ

Presenters: Wendy Wiles and Audrey O'Brien

Wendy Wiles, Land Quality Division administrator, gave an overview of the item, and noted that the presentation shown to the commission will be given to all staff as an opportunity for feedback and discussion on The Natural Step and DEQ's sustainability plan.

Audrey O'Brien, northwest region solid and hazardous waste manager, explained that she is a trainer with the DEQ sustainability team, and welcomed comments and feedback on the process of the presentation as well as content. O'Brien explained that The Natural Step sustainability framework uses measurable standards to assess progress, and its framework is consistent with DEQ's model as a science-driven organization. O'Brien discussed The Natural Step's four system conditions, and their use and application at DEQ. O'Brien discussed the planning process DEQ used to create its sustainability goals and plan, internal and external goals in the plan and activities that will help DEQ achieve these goals.

Director Pedersen noted that he has been involved with The Natural Step, and DEQ and the commission have been engaged in conversations about sustainability for many years. He explained that the plan and goals would help DEQ engage and operate its programs and implementation tools in a more sustainable way than has been possible and done in the past. Pedersen added that sustainability should be a major conversation as part of the update and discussion around DEQ's strategic directions.

Vice-chair Williamson stated that The Natural Step is a great framework, and its four system conditions allow DEQ to build in more reverence to the world through its operations and outreach to regulated sources and communities. He noted that DEQ is seen as the leader for state agencies and the citizens of Oregon for sustainability.

V. Commissioner reports

Commissioner O'Keefe explained that there is a lot of excitement in Lakeview for the commission's meeting in June, and is looking forward to having the commissioners visit southeastern Oregon.

Vice-chair Williamson explained that the Oregon Watershed Enhancement Board, of which he is a voting member, is funded partly by lottery funds, which are projected to decline significantly. There is a lot of discussion on what OWEB can do to address that funding decline, and retain financial support for 70 watershed councils around the state as priority and then other items that the board funds. Director Pedersen added that that there are many water projects happening in the Bend area because of stimulus money and large-grant funding from OWEB.

T. Action item: Horecny contested case dismissal

Presenters: Leah Koss and Bryan Smith (by phone)

Larry Knudsen, legal counsel, polled the commission for any ex parte contacts between the commission and the respondent in the case and there were none. Knudsen presented the information on the process of a commission's contested case and noted that commission rules allow the commission to dismiss the case based on procedure and statute.

Commissioner Uherbelau noted that she does not believe that the commission has a role to consider contested case issues of legal concern, but it is not a legal issue and is clear the respondent did not file required briefs in the time allowed.

Action: Issue a final order adopting Judge Betterton's Proposed and Final Order.

Move: Commissioner O'Keeffe

Second: Commissioner Dodson

Passed unanimously

U. Action item: Pennie contested case

Presenters: Leah Koss and Regina Cutler

Larry Knudsen, legal counsel, polled the commission for any ex parte contacts in this case, and there were none. Knudsen presented the information on the case, and noted that the principle issue in the case is an argument over alleged unconstitutional search of the property. Knudsen noted the important documents in the process, and reminded the commissioners that they cannot consider new evidence presented in this case and the record for the contested case is established by the findings of fact made by the administrative law judge. Knudsen also explained the commission's options for action.

Dale Pennie presented his argument that county and state inspectors and officials violated his constitutional and civil rights by accessing his property without an administrative search warrant to take photos as evidence of an environmental violation on the Pennie and Cox properties by way of an easement granted to Pennie to use a driveway on the Cox property. Pennie noted that he kept items on the property in order to recycle them and kept salvaged items away from landfills by keeping them on the property. Pennie acknowledged that he has items on the property, and that the items are not visible from a public right-of-way and a person must go down 800 feet of driveway and onto Pennie's property.

Regina Cutler, environmental law specialist, presented DEQ's argument in the contested case and presented an overview of the timeline of the case and DEQ's actions. Cutler note that Pennie has use of the road, as an easement, and not the right to exclude others, which is the sole right of the property owner, Cox. Cutler asked the commission to uphold the judge's findings as supported by the evidence in the record.

Vice-chair Williamson asked if the Department of Justice had any clarifying statements for this issue. Gary Vrooman, assistant Attorney General, clarified the specifics of the easement and stated that Cutler's statement of the plain view doctrine was accurate. Vice-chair Williamson asked for a definition of solid waste, and Cutler responded that DEQ's rules define solid waste as useless or discarded material.

Pennie and Cutler presented rebuttal arguments, and clarified several points and statements. Vice-chair Williamson closed the testimony, and asked the commission for discussion on the case. Commissioner Uherbelau commented that, under rule, the commission is the body to hear this case, but she does not agree that the commission is the proper body to make legal decisions and will abstain from voting on this case.

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

Move: Commissioner O'Keeffe

Second: Commissioner Dodson

Passed with three commissioners in support and one abstaining.

Yes: Vice-chair Williamson, Commissioner Dodson and Commissioner O'Keeffe

No: none

Abstain: Commissioner Uherbelau

Vice-chair Williamson adjourned the meeting at 3:15 p.m.