

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

Portland, Oregon
DEQ headquarters
811 SW 6th Avenue
Room EQC-A, floor 10

Wednesday, August 18

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

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

A. Preliminary commission business: Review and adopt minutes of the June 16-17, 2010 regular meeting

The commission reviewed and discussed the minutes from the June 16-17, 2010, regular meeting.

Motion: Approve the minutes as presented.

Moved: Commissioner O’Keeffe

Second: Vice-chair Williamson

Approved unanimously

B. Action item: Water quality rulemaking fee increase

Presenters: Neil Mullane and Chris Clipper

Neil Mullane, Water Quality Division administrator introduced the item. Chris Clipper, water quality policy analyst and stormwater specialist, presented information on the proposed fee increase of three percent for water quality permits excluding suction dredge permits. The commission asked clarifying questions about the proposed fee increase, and Clipper and Mullane provided the specific answers to the commission’s questions. Clipper explained DEQ’s public outreach in advance of the proposed fee increase, and recommended that the commission approve the three percent fee increase.

Commissioner Uherbelau encouraged DEQ to pursue assessment of the costs for the 700 PM suction dredge permit for real costs to DEQ. The permit costs \$25 and the cost is set by Oregon statute. Commissioner Uherbelau stated that DEQ should ask the Oregon Legislature for authority to increase that permit fee if it does not cover real costs. Commissioner O’Keeffe expressed her support for DEQ developing a web-based permitting function, and asked for clarifying information about the Blue Ribbon Committee. The commission discussed opportunities for DEQ to use web-based permitting and the legal and technical challenges associated with e-permits. Director Pedersen noted that DEQ is moving toward e-permitting and other technological updates that will allow DEQ to increase work efficiencies and capacity while reducing paper use and duplicative processes.

Motion: Adopt the proposed amendments in attachment A of this item to increase permit fees in chapter 340 of divisions 45 and 71 of the Oregon Administrative Rules.

Moved: Vice-chair Williamson

Second: Commissioner O’Keeffe

Approved unanimously

C. Informational item: Oregon’s groundwater

Presenter: Greg Pettit

Director Pedersen gave opening remarks and explained that this presentation provides background for the commission’s special meeting on Strategic Directions planned for fall 2010. Greg Pettit, DEQ’s laboratory and environmental assessment division administrator, discussed the basics of groundwater flow, concerns for groundwater contamination in Oregon, processes and mechanisms used to clean up contaminated groundwater and general conclusions about the critical nature of clean and safe groundwater for all Oregonians.

The commission discussed potential groundwater impacts from forestry activities, and Pettit noted that DEQ has not focused on forestry activities when assessing groundwater issues. Pettit and the commissioners discussed the public health and environmental concerns associated with groundwater contamination, and expressed concern over high concentrations of contaminants in domestic drinking water wells found during real estate transactions, reported to the Oregon Department of Human Services Health Division.

Pettit described federal and state regulatory frameworks for addressing groundwater and programs for groundwater protection under Oregon’s Groundwater Protection Act of 1989.

Pettit showed the commission DEQ’s groundwater website. Commissioner Uherbelau noted that educating Oregon Legislature is important, and DEQ should connect the data and scientific issues with the personal and human effects of groundwater contamination for legislators.

Commissioner Dodson noted that state public health agencies do have some federal funds, and it is an opportunity for DEQ to collaborate with public health agencies to protect groundwater. Director Pedersen said that he is meeting with the Public Health Advisory Board to discuss that opportunity, and DEQ is working with onsite septic system owners to develop best practices and educational opportunities for maintenance and installation improvements. Vice-chair Williamson stated that the commission should focus on ways to get greater and faster incremental improvements for groundwater management areas. Commissioner Dodson noted that it is a good time for consumers to demand water without contaminants. Chair Blosser suggested that Commissioner Dodson join Director Pedersen in his presentations to other public health boards and the Legislature on groundwater issues.

D. Informational item: Combined sewer overflows in Astoria

Presenters: Neil Mullane, Greg Geist and Mike Pinney

Neil Mullane introduced Greg Geist, water quality manager, and Mike Pinney, water quality environmental engineer.

Geist updated the commission about combined sewer systems, overflows and Astoria's stipulated final order. Pinney explained background and history for Astoria's 1993 order with the commission regarding combined sewer overflows. He explained that the order contained provisions for a study, updated facility plan and future revisions and provided information on updates to the city's collection, pumping and wastewater treatment facilities to reduce combined sewer overflows. He noted that the original order required an average 99.6 percent reduction in overflows, and Astoria proposed alternatives in its facility plan with a preferred alternative that controls and treats 96 percent of the average annual combined sewer overflow for a cost of approximately \$39 million (2010 dollars).

Pinney said that Astoria would like to propose its preferred alternative as a revision to the final order with the commission. Pinney explained that DEQ supports this revision and will bring an action item with an amendment to the stipulated final order for commission consideration in October 2010. Chair Blosser asked if there is any environmental benefit to requiring 96 percent control when EPA requires only 85 percent control. Geist explained that EPA's requirement for 85 percent would not meet water quality standards in Astoria, and modeling supports a 96 percent level of control meeting water quality standards.

Chair Blosser invited Kevin Brodie, Astoria city engineer, and Cindy Moore, assistant city engineer to introduce themselves. Brodie and Moore thanked the commission for considering revisions to the order. Director Pedersen and the commission thanked the engineers, and all city engineers, for developing successful solutions to difficult engineering problems.

This item was taken out of order

P. Informational item: Director's dialogue

Presenter: Dick Pedersen

Director Pedersen's discussion included cleanup activities in Portland harbor at the Zidell facility site, potential Superfund listing for the Astoria Marine Construction site, liquefied natural gas projects in Oregon, DEQ's TMDL program successes, water quality permitting program changes and ability to reduce a permit backlog in 2010, a new household hazardous waste facility in eastern Oregon, plans for a landfill in Arlington to install a waste conversion technology known as plasma gasification, Oregon's concerns about garbage from Hawaii coming up the Columbia River to a facility in Washington, proposed asbestos cleanup in Sunriver, a need for asbestos cleanup and possible Superfund listing in Klamath Falls at Northridge Estates, sewage treatment plant upgrades in Klamath Falls, a planned biomass plant in Lakeview, federal and state climate change updates, information about PGE's Boardman coal-fired power plant, and air quality and air toxics issues in Portland and around Oregon. The commission asked clarifying questions to which Director Pedersen provided additional information.

Director Pedersen, with approval from the commission, split the presentation of this item to maintain established agenda times.

Chair Blosser left the meeting at 11:30 a.m. and Vice-chair Williamson assumed the duties of chairperson until 1:30 p.m.

F. Action item: Grabhorn contested case hearing

Presenters: Leah Koss and Regina Cutler

Larry Knudsen, the commission's legal counsel, provided introductory remarks and explained the rules and statutes that govern its hearing of contested cases. Knudsen explained that the commission received a motion related to this contested case this morning, and it appeared to relate to ex parte communications for this contested case. Knudsen explained the standards and provisions for ex parte contact as they relate to commission business and this specific contested case. Knudsen asked Vice-chair Williamson, acting as chair, to poll the commissioners for any ex parte contact in this case, and the commissioners reported none. Knudsen asked Vice-chair Williamson, acting as chair, to poll the commissioners for any conflict of interest in this case, and the commissioners reported none. Knudsen asked George McKallip, representative for Grabhorn, to begin his opening arguments. Based on agreement between DEQ and McKallip, opening arguments were allowed 15 minutes, longer than the five minutes typically provided for opening arguments.

McKallip presented opening arguments for the contested case and presented large-format copies of information provided in the case record to illustrate specific points of his argument. Leah Koss, DEQ's Office of Compliance and Enforcement interim manager, introduced Regina Cutler, DEQ environmental law specialist, who presented DEQ's opening argument. McKallip and Cutler each presented brief rebuttal statements based on opening arguments. McKallip asked the commission to dismiss the violations and associated civil penalties against Grabhorn. Cutler asked the commission to uphold Judge Mann's summary determination and proposed order as a final order in this contested case.

The commission asked clarifying questions. Cutler and McKallip provided responses.

Motion: Issue a final order adopting Judge John Mann's Ruling and Proposed Order in its entirety.

Moved: Commissioner O'Keeffe

Second: Commissioner Dodson

Approved with three commissioners in favor and one abstention.

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

Opposed: none

Abstaining: Commissioner Uherbelau

Chair Blosser was not present for this item, motion or vote.

**Vice-chair Williamson recessed the meeting for lunch at approximately 12:30 p.m.
Chair Blosser reconvened the meeting at 1:30 p.m.**

G. Informational item: The effects of climate change

Presenters: Andy Ginsburg, DEQ, and Dr. Thomas Peterson, NOAA

Andy Ginsburg, Air Quality Division administrator, introduced Dr. Thomas Peterson, research meteorologist at NOAA's National Climatic Data Center and chair of the World Meteorological Organization's Commission for Climatology. Dr. Peterson discussed global climate change impacts in the United States.

Highlights of Dr. Peterson's presentation:

- Global warming is unequivocal and human-driven
- Climate changes are underway in the U.S. and projected to grow
- Widespread climate-related impacts are occurring now and are expected to increase
- Climate change will stress water resources
- Crop and livestock production will be increasingly challenged
- Coastal areas are at increasing risk from sea-level rise and storm surge

- Threats to human health will increase
- Climate change will interact with many social and environmental stresses
- Some tipping points will be reached, leading to unpredictable changes
- Future climate changes and its impact depend on choices made today.

Dr. Peterson explained that there are two options in response to climate change: adaptation or mitigation and discussed examples of each. The commission thanked Dr. Peterson for travelling to Oregon for this discussion. Director Pedersen also thanked Dr. Peterson, and stressed the importance of adaptation and DEQ's ability to respond to the needs of Oregonians. Ginsburg noted that the next presentations to the commission would include information about mitigation and adaptation.

P. Informational item: Director's dialogue (continued)

Director Pedersen continued the presentation of the director's dialogue, which was split before item F. Director Pedersen discussed the Oregon E-Cycles program's success in 2010, new federal rules for cement plants that affect the Ash Grove plant in eastern Oregon, Oregon's paint product stewardship program, algae bloom management at Wapato Lake and DEQ's issuance of the revised 700 PM suction dredge permit. Director Pedersen provided a verbal update on DEQ's efforts to make all lab analysis data fully accessible via the web and his recent visit to a nursery that extended an invitation to the commissioners to visit and observe its riparian and reuse projects.

Commissioner Uherbelau noted that the suction dredge issue is still very dynamic in southern Oregon and DEQ will likely have more people inquiring about this permit in 2011.

Commissioner Uherbelau asked what, if anything, DEQ is doing regarding a take-back or stewardship program for pharmaceutical and personal care products. Director Pedersen noted that DEQ is not directly engaged, but there is a lot of discussion at the state and local levels on this issue. The commission asked Janet Gillaspie, executive director of ACWA, who attended the meeting, to provide comment on this issue. Gillaspie described some local government efforts to host drug take-back programs, and noted that she would send additional information to the commissioners after the meeting.

H. Informational item: Water quality human health criteria update

Presenters: Neil Mullane, Jennifer Wigal and Gene Foster

Neil Mullane, Water Quality Division administrator, introduced Jennifer Wigal, water quality standards coordinator, and Gene Foster, water quality manager. Mullane explained the content of the presentation and presented an overview of the process and timeline for the water quality human health criteria rulemaking. Wigal explained the timeline, process and content of the expedited metals rulemaking, one element of the larger human health criteria rulemaking. Wigal

noted that this expedited rulemaking would cover arsenic, iron and manganese and DEQ plans to bring the rules for commission action in December 2010. Wigal presented the draft revised standards for arsenic, iron and manganese, and the proposal of a draft arsenic reduction policy. Commissioner O’Keeffe asked what other states, particularly Washington, are doing for arsenic, iron and manganese, and Wigal replied that a number of inland and coastal states have revised their standards and that Oregon’s proposed revisions will be more stringent than values required under the Safe Drinking Water Act due to the use of human health criteria. Wigal noted that Washington is interested in Oregon’s process.

Wigal presented information on the revised toxics criteria for human health, based on a fish consumption rate of 175 grams per day, new proposed intake credits for toxic pollutants, proposed background pollutant allowances in permit implementation and variance requests. Foster presented information on the non-permitted sources and elements of the toxics rulemaking. Foster explained DEQ’s process to solicit information and feedback from project stakeholders and effected parties, issues associated with nonpoint source pollution, DEQ’s regulatory authorities associated with nonpoint sources, issues concerning implementation-ready and other types of TMDLs, toxic pollutants associated with sediment and a revised antidegradation policy and internal management directive. Wigal explained DEQ’s approach to the fiscal analysis for the proposed rule revisions and updates, and described the components of the fiscal analysis.

The commission discussed the issues of fiscal impact associated with the revised rules, and the rules’ relationship to established agricultural and forestry standards and acts. Wigal presented an overview of the feedback from permitted and non-point stakeholders, and the commission welcomed comment from several stakeholder representatives present in the audience.

Mullane invited Kathryn VanNatta, governmental affairs manager for Northwest Pulp and Paper Association, and Janet Gillaspie, executive director for ACWA, to address the commission. VanNatta explained that NWPPA is supportive of the point-source rulemaking, and is committed to working with DEQ through the rulemaking process but has concerns about sources that may not be able to comply with revised standards due to toxics present in the manufacturing input and resource stream. Gillaspie stated that the municipalities share the concerns of NWPPA’s industrial clients. Gillaspie asked the commission to request from DEQ additional information on variances at the October meeting, since those details have not yet been provided.

Neil Mullane clarified that DEQ will have an implementation plan as part of the June 2011 proposed rules, but that it is not possible for DEQ to develop an implementation guidance document by October 2010. He explained that a draft rule with implementation guidance will be available by the end of December 2010. Mullane stated that DEQ will discuss the issues raised today with its rulemaking stakeholder group.

I. Informational item: Agency toxics reduction strategy

Presenters: Wendy Wiles, Palmer Mason and Kevin Masterson

Wendy Wiles, Land Quality Division administrator, introduced Palmer Mason, legislative analyst, and Kevin Masterson, agency toxics coordinator, and presented a brief update about DEQ's progress in developing an agency-wide toxics reduction agency. Wiles explained that DEQ plans to have a draft plan with recommended actions by the end of 2010. Director Pedersen offered clarifying information about the agency-wide toxics reduction strategy and plan, and explained that DEQ's efforts to bring an agency-wide strategy are an approach to connect previously disparate programs at DEQ with an integrated approach with prioritized project goals and actions. Director Pedersen explained that it is important for DEQ and Oregon to work on toxics in a coordinated way, and that the agency-wide toxics reduction strategy is an opportunity for DEQ to connect with stakeholders to achieve environmental beneficial outcomes and toxics reduction.

The commission agreed with DEQ's approach to toxics reduction as an agency-wide strategy, and thanked the presenters for clarifying the process forward at this point.

Chair Blosser recessed the commission at 5:15 p.m. until 8:30 a.m. on Thursday, August 19.

DEQ staff and commissioners attended an informal dinner in downtown Portland. The dinner was not a part of the formal meeting agenda, and no commission business was discussed.

Thursday, August 19

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

J. Public forum

The commission allowed comment in-person and by telephone for members of the public who signed a request-to-speak form at one of four regional DEQ offices. Staff at the Bend, Hermiston, Medford and Eugene DEQ offices facilitated the telephone conference call. The Hermiston office had members of the public attend and comment, but the other three regional offices did not.

Bend DEQ office: 475 NE Bellevue, Suite 110

Hermiston DEQ office: 256 East Hurlburt, Suite 117

Medford DEQ office: 221 Stewart Avenue, Suite 201

Eugene DEQ office: 165 East 7th Avenue, Suite 100

1. John Ledger, Vice President of Associated Oregon Industries, commented regarding toxics and DEQ's use of rulemaking discretion. Ledger asked the commission to establish a broad policy to only deal with immediate and emergency issues as temporary or emergency rules, and save other rulemakings for regular rulemaking processes with full comment periods and other state requirements.
2. Howard Burns, commenting by telephone at DEQ's Hermiston office, presented comment regarding Hermiston Foods agricultural operation and asked the commission to direct Hermiston Foods to cease land application of treated wastewater.
3. Dave Wallace, Hermiston resident, commented that he lives across from Hermiston Foods. Wallace presented comments about the bad smell and possible nitrate contamination associated with Hermiston Foods, and asked the commission to respond to the concern and direct Hermiston Foods to change their practices and asked DEQ to inspect the facility to ensure it is complaint with its permits.
4. Neela Wallace, Hermiston resident, commented that she is concerned about overspray from land-applied treated wastewater from Hermiston Foods migrating off their fields and onto watermelon fields. Wallace also commented on the smell associated with the water, and noted that Hermiston Foods' permit has not been revoked and they have not been fined and that DEQ has not been out to inspect the smell and complaints, only inspectors from Hermiston Foods have been to the site.
5. Terry Rolan, Hermiston resident and staff from the Umatilla Sherriff's office, echoed the prior comments about the odors, and commented on problems with the water held in a storage pond at Hermiston Foods. Rolan noted that Hermiston Foods never responded, in writing, to public comment, in accordance with state law. Rolan stated that he disagrees with the concept of self-monitoring, and that Hermiston Foods should not be a self-monitoring source. Rolan also stated that he has not received calls back from Hermiston Foods or DEQ when there are complaints or concerns.
6. Don Walchli, Hermiston resident, stated that the process for Hermiston Foods was disorganized and did not protect the health and environment for residents and farmers. Walchli presented photos to the commission of his property, and commented that the commission has an opportunity to help the residents and farmers who are affected by the land-applied wastewater from Hermiston Foods lack of setbacks and other practices to mitigate impacts from their operations.
 - Director Pedersen responded to the comments from the residents, and noted that DEQ will continue to work with the residents and will provide a written summary of the issues and timeline to the commission with increased communication to the residents. Chair Blosser asked DEQ to hold a forum in the Hermiston area, and Director Pedersen stated that DEQ will look into whatever communications are necessary to work toward a resolution.

7. Bill Elfering, commenting from the Hermiston office, stated that the odors from Hermiston Foods site affect quality of life for neighbors and residents, and asked if odors should be controlled by DEQ.
8. Alex Mauke, from the Oregon Onsite Wastewater Association, explained that he was part of the recent DEQ onsite rulemaking advisory council and is part of the technical advisory committee. Mauke expressed his support of DEQ's proposed legislative concept to restore the onsite program.
 - Director Pedersen thanked Mauke for his work with the technical advisory committee.
9. Terri Witt, executive director of Oregonians for Food and Shelter, commented that a workgroup is working on a toxics reduction strategy for nonpoint sources in Oregon, and the group has reached an impasse regarding nonpoint source regulation. Witt noted that he does not believe that DEQ has authority to regulate agricultural and forestry nonpoint sources, and those authorities lie with the Oregon Department of Agriculture and the Oregon Department of Forestry. Witt noted that Chris Jarmer, Oregon Forest Industries Council, could not attend but asked that Witt present comment that he is also concerned about DEQ usurping regulatory authority from ODA and ODF.
 - Chair Blosser asked for a legal analysis comparable to the opinion offered by DoJ, and Witt replied that he could provide that if he is provided with the opinion.
10. Jennifer Shmikler, regulatory affairs specialist for Oregon Farm Bureau, presented comment on the water quality human health toxics rulemaking. Shmikler stated that the primary concern of OFB is a potential conflict of regulatory authority between DEQ and ODA about the water quality toxics rulemaking for nonpoint sources. Shmikler commented that the proposed implementation-ready TMDL is an enforcement mechanism, and DEQ does not have the authority to forward that option. Commissioner Uherbelau asked Larry Knudsen, the commission's legal counsel, for clarification related to the Shmikler's comments, which he provided. Vice-chair Williamson offered clarifying comment, and stated that DEQ's objective is to collaborate with ODA and ask sources and farmers to adopt the best practices to achieve water quality standards.
11. Chris Winter, public interest and environmental law attorney Crag Law Center and on behalf of Northwest Environmental Defense Center, presented comments about logging roads and stormwater based on a recent court case in the 9th Circuit Court. Winter explained that the court found that point sources discharging into the Tillamook River now require a point source permit, in contrast to past understandings and agreements that they did not. Winter stated that DEQ would have the opportunity to develop a permitting program to regulate the point sources discharging off logging roads in forested lands. Winter requested that the commission reserve time at a future meeting to take comment and information on this issue.
12. Dave Robertson, PGE's vice president of public policy, submitted a folder of information for commissioners and presented comment from the materials in the folder. Robertson stated that PGE wants to close the Boardman plant in 2020, but the DEQ options presented for a 2020 or

earlier closure are not feasible. Robertson explained that DEQ has agreed to allow PGE to submit a third BART proposal and will continue to work with DEQ and provide additional information through the process. The commission asked clarifying questions for Robertson, which he answered.

Note: Commissioner Uherbelau left the meeting from 9:45 to 10:15 a.m.

This item was taken out of order

L. Informational item: Status and activity update for the Umatilla Chemical Agent Disposal Facility

Presenters: Joni Hammond and Steve Potts, with representatives from the U.S. Army

Joni Hammond, DEQ deputy director, introduced Steve Potts, chemical demilitarization program senior staff, who presented an update on the Umatilla Chemical Agent Disposal Facility. Potts discussed permit modifications in process at the facility, proposed renewal of the hazardous waste permit at the facility and other facility projects and progress.

Joni Hammond invited Don Barclay, director of the U.S. Army Chemical Materials Agency, to address the commission regarding the destruction and demilitarization treaty and associated deadline of April 2012 to destroy munitions at the Umatilla depot. Barclay distributed a handout to the commissioners with information about these topics and discussed the provisions of the treaty and ability of the Umatilla depot to meet the treaty deadline. Barclay noted that the Army is committed to safely destroy and dispose of chemical weapons, and that the Umatilla depot will likely not complete destruction and disposal by April 2012 but will do so by summer 2012.

This item was taken out of order

K. Action item: Field burning rules

Presenters: Andy Ginsburg and Brian Finneran

Andy Ginsburg, Air Quality Division administrator, gave opening comments and introduced Brian Finneran, air quality planner. Finneran presented background information and information about the proposed rulemaking. Finneran distributed revised motion language for the proposed rules, which removed the language indicating that the rules, if adopted, would be a revision to the Oregon State Implementation Plan. Finneran explained that the revised language would implement the rules, if adopted, as state rules only.

The commission asked clarifying and informational questions and discussed specific elements of the proposed rules and its development process. Finneran discussed DEQ's public comment process, and revisions made in response to some of the changes requested during the public comment period. Commissioner Uherbelau asked for clarification and minor language changes not material to the

rule, and Larry Knudsen, commission's legal counsel, verified the commission's ability to make the requested changes. Chair Blosser read the three amendments to typos identified in attachment A1 of the staff report into the record to support the motion language.

Motion: Adopt the revisions to Division 266 Field Burning Rules (Willamette Valley) as presented in attachment A1 of this item.

Moved: Commissioner Dodson

Second: Vice-chair Williamson

Approved unanimously

This item was taken out of order

M. Action item: 2011 Agency Request Budget certification and legislative updates

Presenters: Greg Aldrich and Jim Roys

Greg Aldrich, government relations manager, presented information on the state's budget status, possible impacts to DEQ based on state budget shortfalls, DEQ's legislative concepts and general legislative updates. The commission discussed options available to DEQ in response to budget reductions at the state level. Jim Roys, budget manager, presented an update on DEQ's budget and reduction options, and reviewed the content of the Agency Request Budget for DEQ in 2011-13.

Motion: Chair Blosser, on behalf of the commission, signs to certify DEQ's 2011-13 Agency Request Budget.

Moved: Vice-chair Williamson

Second: Commissioner O'Keeffe

Approved unanimously

Lunch and executive session

The commission met in executive session from approximately noon 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).

N. Action item: Air quality temporary rulemaking for PM 2.5 and ACDP

Presenters: Andy Ginsburg, Uri Papish and Jill Inahara

Andy Ginsburg, Air Quality Division administrator, introduced Uri Papish, air quality program operations manager, and Jill Inahara, environmental engineer, and stated that the proposed temporary rules deal only with immediate issues for DEQ's ability to implement the associated programs.

Inahara presented information for the proposed temporary rules, and discussed the outreach process DEQ used to gather feedback from stakeholders. Inahara explained the reasons and need for the proposed temporary rules, and presented a proposed schedule for permanent rulemaking on this issue. The commission asked clarifying and informational questions about the proposed temporary rulemaking.

Motion: Adopt the statement of need and justification for temporary rules as shown in attachment D, and adopt amendments to OAR 340, Divisions 200, 202, 216, 224 and 225 as shown in attachment A of this item.

Moved: Commissioner O’Keeffe

Second: Vice-chair Williamson

Approved unanimously

O. Action item: Air quality toxics benchmark concentrations rulemaking

Presenters: Andy Ginsburg and Gregg Lande

Andy Ginsburg, Air Quality Division administrator, introduced Gregg Lande, air quality specialist, who presented information for the proposed rules. Lande explained how DEQ uses its air toxics benchmarks, the process used to review the benchmarks for necessary updates, the review of the Air Toxics Science Advisory Committee and DEQ’s public outreach for the proposed rules.

Lande reviewed the changes DEQ made in response to review at the agency, state and federal levels and in response to comments. Ginsburg commented that many members of the public were interested in DEQ adding benchmarks for very high, short-term exposures to air toxics but that DEQ is currently unable to monitor for those exposures. Ginsburg stated that DEQ committed to researching and analyzing the possibility of benchmarks for very high, short-term exposures but is not prepared to include those in the proposed rules at this time.

The commission discussed the proposed rules and asked clarifying and informational questions. Vice-chair Williamson suggested that the program consider using a set of benchmarks that incorporates an acknowledgement of the concerns that there are no safe levels for certain air toxics, and use a model similar to drinking water standards that set a goal at zero with technically feasible maximum contaminant levels as the standard.

Motion: Adopt the proposed updates to OAR 340-246-0090, as seen in attachment A of this item, for ethyl benzene, lead and manganese. Adopt the clarification to OAR 340-246-0090, as seen in attachment A of this item, in which the current ambient benchmark concentration for mercury only applies to elemental mercury.

Moved: Commissioner Dodson

Second: Commissioner O’Keeffe
Approved unanimously

This item was taken out of order

Q. Commissioner reports

Commissioner O’Keeffe discussed her involvement with the DEQ audit committee.

Vice-chair Williamson stated that he and Chair Blosser have been involved with the water quality toxics rulemaking. Vice-chair Williamson discussed his role as chair of a DEQ industrial stormwater advisory committee.

Chair Blosser presented a request from the Confederated Tribes of the Umatilla Indian Reservation to hold the June 2011 commission meeting in the Pendleton and Umatilla area.

Greg Aldrich, DEQ government relations manager, presented a summary of the commission’s key performance measures for 2009. The measures are included with DEQ’s Agency Request Budget, and the commissioners discussed the results and the measures. Aldrich explained that DEQ could present additional information for the commission related to the categories that received a lower ranking, or could provide more information to prepare the commissioners for the annual update of measures each fall. The commission requested an informational and discussion item at a later date to review the measure and discuss areas for improvement.

This item was taken out of order

E. Action item: Noble contested case hearing

Presenters: Leah Koss and Jeff Bachman

Larry Knudsen, the commission’s legal counsel, provided introductory remarks and explained the commission’s rules and statutes that govern its hearing of contested cases. Knudsen explained the standards and provisions for ex parte contact as they relate to commission business and this specific contested case. Knudsen asked Chair Blosser to poll the commissioners for any ex parte contact in this case, and the commissioners reported none.

Robert Noble, the respondent in this contested case, presented his opening argument. Leah Koss, interim manager for the Office of Compliance and Enforcement, introduced Jeff Bachman, environmental law specialist, who presented DEQ’s opening arguments in this contested case. Noble and Bachman both presented opening and rebuttal arguments, and the commission asked clarifying and informational questions about the information presented in the item materials and oral arguments.

Draft ___
Approved ___
Approved with corrections X

Motion: Issue a final order adopting Judge Mann's Proposed and Final Order in its entirety.

Moved: Vice-chair Williamson

Second: Commissioner O'Keeffe

Approved with four commissioners in support and one abstention

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

***Opposed:** None*

***Abstaining:** Commissioner Uherbelau*

Chair Blosser adjourned the meeting at approximately 3 p.m.