



State of Oregon Department of Environmental Quality

Minutes: Oregon Environmental Quality Commission meeting

407th regular meeting

Jan. 23 and 24, 2020

Hillsboro Civic Center, 150 E Main Street

Thursday, Jan. 23, 2020: 10:45 a.m. to 5 p.m.

A. Tour of DEQ's lab

At approximately 9 a.m., commissioners and some DEQ staff convened at the DEQ lab, in Hillsboro, to hear about the operations of the Laboratory and Environmental Assessment Division and tour the facility. No commission business was conducted at the off-site informational tour.

Meeting open and welcome

Chair George convened the meeting at 11:27 a.m. All commissioners were present: Chair Kathleen George, Vice-chair Sam Baraso, Commissioner Greg Addington, Commissioner Molly Kile and Commissioner Wade Mosby.

B. Action: Minutes review and approval

The commission reviewed the proposed draft meeting minutes from the Nov. 14-15, 2019, EQC regular meeting.

Action: Approve the Nov. 14-15, 2019, EQC meeting minutes as presented.

Move: Vice-chair Baraso

Second: Commissioner Mosby

The commission approved the Nov. 14-15, 2019, EQC meeting minutes as presented.

C. Informational: Tour debrief

Commissioners discussed the tour of DEQ's laboratory and addressed follow-up questions and discussion. Lori Pillsbury, Lab administrator, and a panel of lab managers provided responses. The panel of presenters included Aaron Borisenko, Ned Fairchild, Zach Mander and Tom Roick.

Working lunch and executive session

Chair George recessed the commission at 11:45 a.m. until 1 p.m. for a working lunch and executive session. The commission met with Department of Justice staff and some DEQ staff as part of the executive session, pursuant to ORS 192.660(2)(f) and (h).

D. Informational: Oregon Recycling Steering Committee update

David Allaway, Senior Materials Management Policy Analyst, and Abby Boudouris, Land Quality Division Legislative Analyst, presented an update on the Oregon Recycling Steering Committee and possible changes to recycling in Oregon.

Boudouris provided an overview of the state's *2050 Vision and Framework for Action*, which is being updated since its 2012 initial draft. Allaway described the benefits of recycling and the current state of Oregon's recycling system. Boudouris detailed the work of the Recycling Steering Committee, convened in 2019, and its work to make recommendations for future state action to modernize the recycling system in Oregon. Allaway walked the commissioners through the five key issues being evaluated by the committee, and Boudouris described the project's timeline and expectations for next steps.

Commissioners asked clarifying and informational questions throughout the presentation.

E. Informational: Oregon's Environmental Protection Act

Director Whitman introduced the item and noted that Annalisa Bhatia, Senior Legislative Liaison, would lead and Jenifer Wigal, Water Quality Deputy administrator, and Ali Mirzakhilili, Air Quality administrator, would provide additional detail on this item.

Bhatia summarized the updates since the November 2019 presentation. Mirzakhilili described the agency's analysis and recommendations related to federal changes to fuel efficiency standards. Wigal described the agency's analysis and recommendations related to federal changes to Waters of the United States standards and rules. Director Whitman provided additional information regarding the possible implications for Oregon's water programs related to the federal changes.

F. Informational: Budget and legislative updates

Nancy Bennett, Policy and External Affairs manager, introduced this item. She noted that today's presentation is an overview of the agency's draft legislative priorities for the 2021 Session. Bennett outlined the general timeline and process for the development of the agency's budget and its legislative agenda. She also summarized key themes for the agency's approach to legislative priorities in 2021: Following through on commitments, modernization and preparing for the future.

Matt Davis, Air Quality Division Legislative Analyst, provided a summary of the air programs' priorities and opportunities for the 2021 Legislative Session. Those priorities included:

- Addressing ozone and smoke impacts
- Leveraging community science and data

Abby Boudouris, Land Quality Division Legislative Analyst, outlined the budget and legislative priorities of the land-related programs. Those priorities included:

- Modernization of the state’s recycling systems and infrastructure
- Emergency response work
- Modernization of environmental cleanup practices and priorities

Rian Hooff, Water Quality Division Legislative Analyst, described the budget and legislative priorities for Oregon’s waters. Those priorities included:

- Building program capacity for service delivery
- Modernize the agency’s laboratory capacity
- Support cross-agency efforts, like the 100-Year Water Vision
- Respond to changes in federal rules and laws

Bennett summarized priorities for the agency’s management programs, such as IT and Human Resources. Commissioners provided feedback and asked questions throughout the presentation. Chair George noted her specific interest in making sure that DEQ, and the commission, support the budget and legislative development needs and efforts of the Departments of Agriculture and Forestry to improve the overall capacity of Oregon’s state government for environmental gains.

Comment opportunity: Budget and legislative updates

Following the staff presentation, Chair George opened a public comment opportunity specific to the DEQ budget and legislative updates. Two people signed up to present comment specific to item F, the agency’s budget and legislative updates.

1. Dale Feik, Washington County Citizen Actions Network, presented comments regarding DEQ’s budget and legislative priorities for the 2021 Legislative Session.
2. Susie Smith, Oregon Association of Clean Water Agencies director, provided comments regarding water issues and priorities for the 2021 Legislative Session.

G. Informational: Director’s report

Leah Feldon, DEQ Deputy Director, provided a summary of the written report’s materials. Director Whitman asked Harry Esteve, Communications manager, to provide an update on a new agency blog, launched today. Director Whitman provided additional verbal updates regarding the agency’s Integrated Report for water, EPA’s draft TMDL for mercury for the Willamette Basin, the Jordan Cove project and state legislation related to climate change. Director Whitman presented a video clip of a recent legislative hearing related to climate change.

Commissioners asked clarifying and informational questions throughout the presentation.

Chair George rescheduled item H to Friday, Jan. 24, 2020

H. Informational: Commissioner reports

Recess

Chair George recessed the commission at 5 p.m. until 8:30 a.m. on Friday, Jan. 24, 2020. Some agency staff attended an evening social dinner with commission members. No business was conducted at the optional, social, self-pay dinner.

Friday, Jan. 24, 2020: 8:30 a.m. to 3 p.m.

Meeting open and welcome

Chair George reconvened the commission at 8:40 a.m. All commissioners were present: Chair Kathleen George, Vice-chair Sam Baraso, Commissioner Greg Addington, Commissioner Molly Kile and Commissioner Wade Mosby.

I. Action: Total Dissolved Gas modification

DEQ will propose a modification to the Total Dissolved Gas standard applied to the Columbia River for the purposes of annual fish passage.

- Presenters: Gene Foster and Paula Calvert

Director Whitman provided an introduction and background on the purpose of the proposed action item. Gene Foster, manager of the Watershed Management program, provided an overview of the presentation. Paula Calvert, Columbia River coordinator, reviewed the Total Dissolved Gas Standard, and the U.S. Army Corps of Engineer's request for a modification. Calvert described the content of the proposed modification, summarized the public comment received for this item and changes DEQ made in response to public comment.

The commissioners asked clarifying and informational questions throughout the item, and discussed potential amendments to some elements of the Order and action.

Action: Adopt the revised Order, as seen in attachment F of the staff report for this item and as revised in a handout to the commission at the meeting, with modifications as read into the record by the commission's legal counsel at the meeting and pertaining to Section 5, Section 6c and a new Section 12

Move: Commissioner Mosby

Second: Vice-chair Baraso

The commission unanimously approved the action as amended and stated

J. Action: Willamette Basin Mercury TMDL Multi-Discharger Variance

Jennifer Wigal, Water Quality Division administrator, introduced the item. She noted that a typographical error in the filing process resulted in a need to not adopt one of the proposed rule amendments, which will not substantively affect the other proposed actions.

Connie Dou, Water Quality Standards manager, provided background on the proposed rule amendments and noted her appreciation on the commission's engagement on this topic. Aron Borok,

Standards specialist, discussed the proposed rule amendments. He described the mercury standards, generally, the use of variances to water quality standards and the need for a variance to mercury standards effective in the Willamette Basin. Borok summarized the requirements and content of the proposed variance, the facilities subject to the proposed variance and other elements of DEQ's proposal.

Borok reviewed a summary of comments received, including changes DEQ made to the proposed variance rules in response to these comments. The commissioners asked clarifying and informational questions throughout the item. The commissioners discussed adding a policy statement to the formal rule amendments, which was read into the record by Borok.

Action: Adopt the rules as seen on pages 73 through 97 of the staff report for this item, with the exception of OAR 340-041-0002, the definitions, as part of Chapter 340 of the Oregon Administrative Rules.

Move: Commissioner Addington

Second: Commissioner Mosby

The commission unanimously approved the motion

K. Informational: Department of Forestry and DEQ collaboration

At the start of the item, Commissioner Mosby recognized Board of Forestry member Joe Justice, attending today as the liaison from Board of Forestry to EQC. Jennifer Wigal, Water Quality Division Deputy Administrator, introduced the item and provided an outline of the item's presentation. Director Whitman provided additional introductory comments related to this item and the ongoing collaboration between Forestry and DEQ.

Kyle Abrahams, Department of Forestry Private Forests Division Chief, described the Siskiyou project and related riparian rulemakings done by the Board of Forestry. Wigal and Abrahams discussed the regulatory relationships between DEQ and Forestry, and the related relationships between EQC and Board of Forestry.

Commissioners asked clarifying questions and discussed water quality and forestry-related policy and regulatory opportunities and collaboration between agencies. Commissioners asked for future updates from DEQ and Forestry, and Wigal noted that the agencies intend to bring updates on a quarterly basis.

L. Action: Oregon Clean Vehicle Rebate Program rules (permanent)

Ali Mirzakhilili, Air Quality Division administrator, introduced this item. Rachel Sakata, Air Quality planner, presented an overview of the Clean Vehicle Rebate Program, the types of rebates offered in the program and a general program status update.

Sakata described the proposed rules, including a change to the definitions used for “household” in the Charge Ahead program. Commissioners asked clarifying and informational questions throughout the item.

Action: Approve the rules as seen in Attachment A to the staff report for this item as part of Chapter 340, Division 270 of the Oregon Administrative Rules.

Move: Commissioner Kile

Second: Commissioner Addington

The commission unanimously approved the action

M. Informational: Indirect source petition

Ali Mirzakhilili, Air Quality Division administrator, introduced this item and provided an overview of the petition and process for the commission’s review and action in March 2020.

Karen Williams, Air Quality planner, described the content of the petition and the agency’s timeline to prepare a recommendation for commission action at the March 2020 regular meeting. The commissioners asked clarifying and informational questions throughout the item and provided direction on specific data and information they would like provided as part of the final staff recommendation.

Comment opportunity: Indirect source petition

At 11:50 a.m., Chair George opened a comment opportunity specific to item M. Approximately 26 people signed up to present comment, with some people ceding their time or otherwise combining comment as shown below.

1. Amelia Schlusser, representing the co-petitioners, provided an overview of the need for the proposed indirect source rules. Mary Peveto, Neighbors for Clean Air, provided additional comments in support as a co-petitioner.
2. Sharla Moffett, Oregon Business and Industry, presented comments regarding the breadth of the petition and concerns about the feasibility to implement this new program.
3. Dale Feik, Hillsboro Air and Water, presented comments supporting the petition.
4. John Rakowitz, Associated General Contractors, presented comments regarding the potential negative impacts to contractors and construction across the state.
5. Wayland Buchan, Oregon Trucking Association, presented comments opposing the petition and its potential costs, with a commitment in good faith to improving trucking fleets through legislative process.

6. Aaron Hunt, Union Pacific Railroad, presented comments in opposition to the petition and proposed rules, and noted specific legal concerns about the petition.
7. Mike Eliason, Oregon Forest Industry Council, presented comments asking the commission to reject the petition and proposed rules.
8. Ellen Miller, Oregon Home Builders Association, presented comments objecting to the petition and proposed rules and noted concerns that the proposed rules would penalize homebuyers due to cost.
9. Jenny Dressler, Oregon State Chamber of Commerce, presented comments objecting to the petition and proposed rules. Dressler noted the Chamber's concerns about potential costs associated with the proposed rules and their feasibility.
10. Dr. Linda George, Portland State University, presented comments regarding the harms of diesel emissions and noted support for the petition and its proposed indirect source rules.
11. Dr. Erica Mosensen, clinician, presented comments regarding medical concerns related to diesel emissions and noted support for the petition and its indirect source rules.
12. Mark Riskedahl, NEDC, presented comment as a co-petitioner and affirmed support for the information within the petition and proposed indirect source rules.
13. Tyler Bristow, Green Lents, presented comment supporting the petition and the proposed indirect source rules, noting the harms of diesel pollution.
14. Torre Heru presented comment in support of the petition and proposed indirect source rules.
15. Jonah Sanford, NEDC, presented additional supportive comments as a co-petitioner.
16. Melanie Plaut, Oregon Physicians for Social Responsibility, presented comment supporting the petition and proposed indirect source rules and emphasized the importance of the proposed rules related to human health.
17. Ann Turner, Oregon Physicians for Social Responsibility, presented comments in support of the petition and proposed indirect source rules, especially for the control of diesel emissions.
18. Dr. Theodora Tsongas, Oregon Physicians for Social Responsibility, presented comments in support of the petition and proposed indirect source rules, based on the human health effects of diesel and related emissions.

19. Susan Mates, League of Women Voters, presented comments in support of the petition and proposed indirect source rules.

20. Kevin Downing, retired DEQ Clean Diesel Program coordinator, presented comments in support of the petition and indirect source rules, noting that technology currently exists to meet the requirements of the proposed rules.

21. Dr. Jae Douglass, Multnomah County Health Department, presented comments in support of the petition and proposed indirect source rules, reiterating the letter of support previously submitted by Multnomah County and several other municipal governments.

22. Erin Saylor, Columbia Riverkeeper, presented comments as a co-petitioner and noted the particular concerns related to diesel emissions as part of the proposed indirect source rules.

23. Shara Alexander, Eliot Neighborhood Association, presented comment in support of the petition and proposed indirect source rules as a means to control black carbon and improve human health and the environment.

Chair George closed the comment opportunity at 12:50 p.m.

Working lunch

Chair George recessed the commission at 1 p.m. for a working lunch to review annual required training from human resources and the Oregon Department of Administrative Services.

N. Public forum

At 2:05 p.m., Chair George reconvened the meeting and opened a public comment opportunity for people to present comment, in-person or by toll-free telephone conference call, on environmental topics.

Five people signed up to present comment.

1. Dale Feik, Hillsboro Air and Water, presented comments regarding fluorinated chemicals and provided a book to the commissioners on the issue.

2. Ron Davis, Hillsboro resident, presented comments opposing the petition as discussed in Item N and the related proposed indirect source rules.

3. Kingsley McConnel, law student, presented comments regarding the Jordan Cove project. McConnel noted appreciation for DEQ's denial of the Section 401 Water Quality Certification and asked the commission and the state to oppose the project.

4. Kate Murphy, Columbia Riverkeeper, presented comments regarding oil trains in Portland Port Westward. Murphy provided a copy of slides and testimony for the commission's consideration.

5. Erin Saylor, Columbia Riverkeeper, presented comments regarding Zenith's Title V Air Quality Permit. Saylor noted that the land use compatibility statement of the prior Title V permit was based on different land uses and activities at the facility, and requested that the commission urge DEQ to evaluate the facility's operations for a draft permit.

Chair George closed the public forum at 2:25 p.m.

This item was taken out of order

H. Informational: Commissioner reports

Commissioners provided verbal updates on their recent activities of interest to the commission.

Commissioner Mosby noted that he recently saw a feature story on Chair George through a local television program. He described the recent Board of Forestry meeting, which he attended as the EQC liaison to that Board, and information from that meeting regarding a recent legal action against the Board and Department of Forestry.

Commissioner Kile noted she was unable to attend the OWEB meeting this week, in her role as EQC liaison to that body, and provided an update on monitoring work being supported by OWEB. She read an excerpt from a recent briefing about fish returning to the West Fork Smith River, and large increases since restoration efforts in that area.

Vice-chair Baraso described a recent meeting with Gerik Kransky, DEQ diesel program coordinator, which provided good insight into grants and other efforts to reduce diesel emissions.

Commissioner Addington noted that his work in southern Oregon related to housing issues has connected to DEQ through its onsite septic systems program, and he intends to reach out to staff to learn more about that work.

Chair George explained that she recently attended the annual government-to-government Tribal summit, as did Director Whitman, and there was some discussion about the 100 Year Water Vision for Oregon. That Vision was also a discussion item at a Tribal governments meeting, with a clear need for Tribal governments to be engaged in more specific and clear ways in discussion with state government. She noted that she and Commissioner Mosby continue to meet with Board and Department of Forestry representatives, and stated her concern for seeming disconnects between agencies on some definitional items and goals.

Chair George adjourned the meeting at 2:40 p.m.

Remaining 2020 meeting dates and locations

March 18-19 (Salem)

May 7-8 (Pendleton)

July 16-17 (Eugene)

September 17-18 (South coast/TBD)

November 19-20 (Portland/metro)