



State of Oregon Department of Environmental Quality

Minutes: Oregon Environmental Quality Commission meeting

399th regular meeting

July 11-13, 2018
Portland

Wednesday, July 11, 2018: 1 to 7 p.m.

- Meeting location: DEQ Portland offices, 700 NE Multnomah Street, 3rd floor conference room
- Tour: Off-site (Portland Harbor)

A. Working lunch and executive session

Commissioners and DEQ staff met with Department of Justice staff to receive information about pending and current litigation and legal advice prepared by DOJ. This session was held pursuant to ORS 192.660(2)(f) and (h).

Following the executive session, Commissioner Kathleen George, acting as presiding commissioner, convened the public EQC meeting at 2:45 p.m.

- Present: Commissioner Kathleen George, Commissioner Greg Addington, Commissioner Sam Baraso, Commissioner Molly Kile and Commissioner Wade Mosby

B. Informational item: Portland Harbor Tour prep

Director Whitman introduced this item and provided an overview of the materials regarding Portland Harbor. He also introduced the co-presenters for this item:

- Nina DeConcini, Northwest Region Division administrator
- Paul Seidel, Toxicologist and Project Manager for the Cleanup Program
- Matt McClincy, Portland Harbor Source Control Coordinator
- Sarah Greenfield, Portland Harbor In-Water Coordinator
- Madi Novak, Portland Harbor Project Manager

DEQ staff presented information about the agency's role in the cleanup of Portland Harbor and provided background on the sites that the commissioners would see during item C, a boat tour. Commissioners asked clarifying and informational questions throughout the presentation.

At the close of the item, Commissioner George noted that the next item, a tour, would take place off-site and the commission would reconvene at 10 a.m. on Thursday, July 12, 2018, at TaborSpace in SE Portland.

This section of the agenda was off-site. There is no audio recording nor detailed notes for this item

C. Tour: Portland Harbor

Commissioners, DEQ staff and invited guests from EPA Region 10 and the Oregon Governor's Office attended a boat tour of Portland Harbor. This section of the meeting was off-site, and the attendees did not discuss commission business not otherwise covered during item B.

The commissioners and DEQ staff attended an informal and optional dinner on Wednesday evening. No commission business was held at the social dinner.

Thursday, July 12, 2018: 10 a.m. to 4:30 p.m., evening hearing 5 to 7 p.m.

- Meeting location: TaborSpace, 5441 SE Belmont Street

Commissioner George reconvened the commission at 10:04 a.m.

- Present: Commissioner Kathleen George, Commissioner Greg Addington, Commissioner Sam Baraso, Commissioner Molly Kile and Commissioner Wade Mosby

D. Informational item: Opening and welcome

Director Whitman introduced this item and described Commissioner Addington's past work in Oregon. Commissioner Addington provided additional comments about his background and his service on EQC.

E. Action item: May 10-11, 2018, EQC meeting minutes

The commission reviewed and took action on the draft minutes of the May 10-11, 2018, EQC meeting.

Action: Approve the May 10-11, 2018, EQC meeting minutes as presented

Move: Commissioner Mosby

Second: Commissioner Kile

The commission unanimously approved the action

F. Informational item: Cleaner Air Oregon updates

Leah Feldon, DEQ Deputy Director, introduced this item. She introduced the co-presenters and provided an overview of the presentation. She thanked the staff who have worked on the Cleaner Air Oregon program development since it began in April 2016.

Ali Mirzakhaili, DEQ Air Quality Division administrator, described updates since the last commission presentation, including those affected by Senate Bill 1541 after the 2018 Legislative Session. Keith Johnson, Special advisor for Cleaner Air Oregon, described the public comment input for the prior iteration of the Cleaner Air Oregon proposed draft rules and changes since the 2018 Legislative Session and revisions in Senate Bill 1541. Johnson noted that DEQ met with the advisory committee for this rule proposal. Johnson described the changes proposed in the revised draft rules, including the proposed Risk Action Levels.

Commissioner Kile asked the presenters about the opportunity to adjust the exposure assessment component of the Risk Action Levels to reflect the breathing rate and other sensitivities for children, since the exposures included in the current proposal relate only to adults. Deputy Director Feldon noted that DEQ and OHA staff will analyze the exposure calculations, and bring a report back to the commission about the exposure factor at its September 2018 regular meeting.

Johnson presented the proposed timeline for the draft rule development, including the hearing before the commission this evening. Commissioner Baraso stated that he would like DEQ to include a statement of policy for the long-term goals of Oregon's air quality, to guide the work of the agency and the direction of the state's air programs. Johnson noted that the draft Cleaner Air Oregon rules do include long-term goals, and read that goal for the commission.

Commissioners asked general clarifying and informational questions about the development process and content of the proposed draft rules. DEQ staff responded, and Director Whitman provided additional clarifying responses.

G. Action item: Appointment for Cleaner Air Oregon Hazard Index Technical Advisory Committee

Ali Mirzakhilili, DEQ Air Quality Division administrator, introduced this item and his co-presenters. Keith Johnson, special advisor for Cleaner Air Oregon, provided background information about the proposed recommendations for the Cleaner Air Oregon Hazard Index Technical Advisory Committee. Johnson described the proposed scope of work and criteria for membership on the committee, as directed in Senate Bill 1541.

Gabriela Goldfarb, Oregon Health Authority Environmental Public Health manager, provided more detail on the membership criteria. She presented the seven proposed members, including five members recruited by DEQ and OHA and two at-large positions selected from an application process. Goldfarb noted that DEQ received eight applications for the two at-large positions.

Commissioners asked clarifying questions about the proposed committee members. Goldfarb and Johnson responded to the questions and provided additional information about the proposed work and structure of the committee.

Action: Appoint the individuals recommended by DEQ and listed in the staff report for this item to serve on the Cleaner Air Oregon Hazard Index Technical Advisory Committee for the duration of that rulemaking process

Move: Commissioner Mosby

Second: Commissioner Kile

The commission unanimously approved the motion

H. Informational item: Water Quality Program Integrated Report process improvement and updates

Jennifer Wigal, DEQ Water Quality Division Deputy administrator, introduced this item and provided an overview of the presentation. Bill Hickey, Integrated Report project manager, described the agency's Integrated Report and its use and the development and approval processes for the report. Hickey described the content of the report and the methodology for assessment specific to the report and as used at DEQ. Wigal noted that the intent of the presentation is an informational briefing and to allow public comment on the draft methodology for the report.

Wigal described the process for developing the Integrated Report, and provided background on the use of this report by DEQ. She noted the improvements DEQ has made in recent years, and areas that remain opportunities for improvement in the collection, analysis and reporting of water quality data for the state. Hickey described the steps DEQ uses to assess water quality, including the call for data from government partners and external sources across Oregon. He walked the commission through each step of the process and DEQ's actions to develop the Integrated Report. He described the improvements made to support the assessment processes.

Wigal described the updates and revisions to the agency's assessment methodology, including ones based on agency improvements, comments received on the Integrated Report and mandated requirements from EPA. She described the agency's engagement with EPA, Tribes, industrial and nongovernmental project partners. Wigal summarized the comments DEQ received, and the ways the agency responded to the comments. Hickey described the additional engagement planned by DEQ regarding the Integrated Report prior to the submittal of the report to EPA in late 2019.

Commissioners asked clarifying and informational questions throughout the staff presentation. Wigal and Hickey answered programmatic questions, and Director Whitman provided additional clarifying information for several questions. Following the discussion, Commissioner George opened the public comment period associated with this item.

Two people signed up to provide comment regarding item H.

1. Peter Broderick, Northwest Environmental Defense Center, provided comment on the draft methodology for the Integrated Report. He noted that his comments reflect the comments previously submitted by NEDC during the public comment period. He requested that DEQ provide a written reply to methodology comments prior to the final methodology.
2. Kathryn VanNatta, NW Pulp and Paper Association, provided comment on the draft methodology for the Integrated Report. She noted her background working with the 303(d) list since 1995 and stated her appreciation for the engagement with DEQ about the draft methodology for the current 303(d) list. She requested that the commission closely evaluate the proposed segmentation in the updated Integrated Report and 303(d) list.

Commissioner George recessed the commission for lunch from 12:55 p.m. until 2 p.m.

Commissioner Baraso participated by phone for item I

I. Informational item: Water Quality policy discussion

Director Whitman introduced this item and explained that it is a continuation of discussions started at the May EQC meeting in The Dalles. Gene Foster, DEQ Watershed Management program manager, provided a program overview, described what a Total Maximum Daily Load, or TMDL, is and the ways DEQ uses TMDLs in its Water Quality programs. He described the development process for TMDLs, the partnerships with state and local entities and the adaptive management process. Foster presented information from the Upper Yaquina River TMDL as an example of these strategies and processes for water quality improvements.

Ryan Michie, Watershed Management Program analyst, described the temperature TMDL for the Yachats River, the Willamette Basin TMDL for the southern Willamette and improvements over time due to the implementation of these plans. He outlined the history of the Tualatin Basin, including a 1960s moratorium on building due to water quality concerns. Michie presented a recent report with significant water quality improvements through the implementation of TMDLs in the Tualatin Basin.

Foster summarized DEQ's strategies to increase TMDL implementation and ways collaboration with other agencies is critical to the success of the plans. The commissioners asked clarifying and informational questions throughout the presentation.

Following the DEQ staff presentation, Alexis Taylor, Oregon Department of Agriculture Director, and Meta Loftsgaarden, Oregon Watershed Enhancement Board Director, discussed ways their agencies collaborate with DEQ for water quality improvements.

Director Taylor introduced Stephanie Hallock, former DEQ director, and Barbara Boyer, two members of the Board of Agriculture attending the meeting. Taylor described the Strategic Implementation Areas across the state designated by ODA as areas of critical water quality protection and improvement. She noted that the SIAs include areas where DEQ also has TMDLs in place including Oregon's mid-coast region, the southern Willamette and Tualatin Basin. Director Loftsgaarden described the non-regulatory role and work of OWEB, and the importance of non-regulatory approaches to water quality improvements. She echoed prior statements about the need for collaboration across agencies, and in partnership with local entities and private landowners, to protect Oregon's waters.

Director Taylor summarized opportunities for policy alignment and better environmental outcomes, with input from DEQ and OWEB presenters. Director Whitman provided closing remarks for this item and the commissioners noted their interest in the topics during the item.

Following the staff presentations, Commissioner George opened the comment period associated with this item. Seven people presented comments regarding DEQ's Water Quality programs and the content presented at the meeting.

1. Rod Park, Oregon Association of Nurseries
2. Curtis Martin, Oregon Cattlemen's Association
3. Doug Cramer, Oregon Farm Bureau
4. Mary Anne Cooper, Oregon Farm Bureau,
5. Mary Scurlock, Oregon Stream Protection Coalition
6. Kyle Smith, Trout Unlimited,
7. Lori Grant, Oregon Environmental Council

Park and Cooper provided copies of their testimony to the commission. The commissioners asked some clarifying questions during the comment, and thanked the commenters for their engagement on water quality issues.

Commissioner George recessed the commission from 4:30 to 5 p.m.

J. Public Hearing: Cleaner Air Oregon

Commissioner George reconvened the commission at 5 p.m. for a public hearing on the draft proposed rules for the Cleaner Air Oregon Program. Keith Johnson and Joe Westersund, both from DEQ, presented agency information on the proposed draft rules. Susana Wegner, Oregon Health Authority, provided additional context and detailed information on the health-related elements of the proposed draft rules.

Commissioner George opened the formal comment portion of the meeting at 5:35 p.m. and provided overview information for people presenting comment. Nine people presented comments on the proposed draft rules and program. The comments were recorded and will be summarized and included in the final materials provided to commissioners as part of the DEQ rule proposal scheduled for November 2018.

Names and organizational affiliations, if provided, are noted below.

1. Angela Crowley-Koch, Oregon Environmental Council
2. Jessica Applegate, Eastside Portland Air Coalition
3. Tori Cole, Neighbors for Clean Air
4. Craig Smith, Food Northwest
5. Abbie Laugtug, Oregon Business and Industry
6. Jody Bleyle, Eastside Portland Air Coalition
7. Alicia Cohen, Eastside Portland Air Coalition
8. Jessica Rojas, Northeast Coalition of Neighborhoods
9. Katharine Salzman

During the hearing, Commissioner George recessed the commission from 5:50 to 6:15 p.m. and then 6:30 to 6:55 p.m. Both recesses were to allow additional time for attendees to sign up to comment. Commissioner George closed the hearing at 6:55 p.m. and recessed the commission until 9 a.m. on Friday, July 13, 2018.

Friday, July 13, 2018: 9 a.m. to 4 p.m.

- Meeting location: TaborSpace, 5441 SE Belmont Street

Commissioner George reconvened the meeting at 9 a.m.

- Present: Commissioner Kathleen George, Commissioner Addington, Commissioner Sam Baraso, Commissioner Molly Kile and Commissioner Wade Mosby

K. Information item: Director's report

Director Whitman introduced this item and noted that the report is re-structured to reflect the agency's reorganization. He provided updates about programs and activities within the agency's Air, Land and Water Quality Divisions, regional highlights and general agency organizational updates. The commission asked clarifying and informational questions throughout the presentation.

L. Action item: Director's annual review process

Deputy Director Feldon presented this item. She explained that the commission performs the annual review for Director Whitman and presented a recommended process for that review to take place this fall. Commissioners discussed the recommended process, including the establishment of a subcommittee of two commissioners to lead the process.

Action: Appoint Commissioners Mosby and Baraso to serve as the subcommittee for the Director's review in 2018; and direct the subcommittee to engage with DEQ Human Resources and other staff as needed to develop and implement a plan for Director Whitman's review process, to be completed in 2018

Move: Commissioner Addington

Second: Commissioner Kile

The commission unanimously approved the action

M. Action item: LRAPA rules

Ali Mirzakhilili, DEQ Air Quality Division administrator, introduced the item. Merlyn Hough, LRAPA director, presented the proposed rules for commission review and action. The commissioners asked clarifying and informational questions for Director Hough and Mirzakhilili.

Action: Approve incorporating the LRAPA rule amendments as seen on pages 52 through 62 of the staff report for this item into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040 (the "SIP revision"); and revise OAR 340-200-0040 as seen on pages 49 through 51 of the staff report for this item to reflect the incorporation of the LRAPA rule amendments as a SIP revision on July 13, 2018; and direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

Move: Commissioner Mosby

Second: Commissioner Addington

The commission unanimously approved the action

N. Action item: Title V fee increase

Ali Mirzakhali, Air Quality Division administrator, introduced this item. Jaclyn Palermo, Air Quality manager, provided an overview of the Title V program. Don Hendrix, Air Quality policy analyst, described the proposed rule revision and fee increase. Hendrix addressed the public comments DEQ received for the fee proposal, and provided the agency’s recommendation for commission action. Director Whitman asked a clarifying question about the phase two projected fee increase, and the commissioners and staff discussed the phased approach. Gary Vrooman, the commission’s legal counsel, provided clarification regarding the motion language for this item.

Action: Adopt the proposed Title V phase one rules, as seen on pages 22 through 25 of the staff report for this item, as part of Chapter 340 of the Oregon Administrative Rules

Move: Commissioner Kile

Second: Commissioner Baraso

The commissioners unanimously approved the action

Item O: Public comment

Commissioner George convened the public forum at 11:35 a.m. People were able to make comment in-person at the meeting venue or via telephone conference line. Eight people signed up to present comment at the meeting venue. One person presented comment by telephone.

1. Melanie Plaut, 350 PDX, presented comments regarding the proposed Jordan Cove LNG pipeline and project.
2. Kelly O’Hanley presented comments regarding the proposed Jordan Cove LNG pipeline and project. She noted the outcome of a third-party survey regarding the project found significant opposition to the proposed actions.
3. Tracey Farwell, Engineers for a Sustainable Future, presented comments regarding engineering solutions to environmental concerns such as decarbonization. He provided a copy of his materials for further commission review.
4. Chris Waine presented information regarding noise regulation in Hermiston and requested that the commission schedule an agenda item regarding noise issues for discussion and action. Waine requested an investigation and memo from the commission on the matter.
Commissioner Mosby asked a clarifying question about the number of residents affected by the issues raised by Waine. Waine replied that the area has approximately 20 residences and additional full-time and part-time residents at a nearby RV park.
5. Bob Palzer, member of the Oregon Smoke Management Advisory Committee, presented comments by phone about the Smoke Management Plan and the need for changes to the public comment period for the plan given recent changes.
6. Regina Merritt presented comments about the proposed Jordan Cove LNG pipeline and project. She noted the specific concerns about the potential harm to Oregon’s drinking water and waters that support Oregon’s fish.

7. Mary Anne Cooper, Oregon Farm Bureau, presented comments about the Willamette Mercury TMDL. She noted that landowners and stakeholders have expressed concerns about the development process for the TMDL, including modeling assumptions used for the development.
8. Kathryn VanNatta, NW Pulp and Paper Association, presented comments regarding her past statements around the need for predictability in DEQ fee schedules, including the timing of the invoicing and engagement with DEQ staff for ongoing discussion.
9. Theodora Tsongas presented comments regarding the members of the Cleaner Air Oregon Hazard Index Technical Advisory Committee and expressed concern about the appointment of a member with a possible conflict of interest.

Commissioner Addington asked clarifying questions about DEQ's noise control regulations and the commission's role related to noise control and noise regulations. Director Whitman provided information about the noise rules and the commission's authorities related to the rules.

Commissioner George closed the public forum at 12:20 p.m. and recessed the commission for lunch until 1:30 p.m.

P. Informational item: Budget updates

Nancy Bennett, Policy and External Affairs manager, introduced the item and described the outline of the presentation. Bennett discussed the budgeting cycle and outlined the main themes of the agency's 2019-21 budget request. Director Whitman provided additional context and detail on the agency's budget and prioritization of agency work and resource allocations. Director Whitman stressed the importance of partnership for DEQ's ability to accomplish its environmental goals and protect Oregonians from environmental and human health risks.

Scott Brewen, Central Services Division administrator, presented an overall summary of DEQ's budget. The administrators for the Water, Air and Land Quality Divisions presented information about their division's budget requests, challenges faced by programs within the divisions, program priorities and how the budget requests for 2019-21 respond to those priorities.

- Water Quality: Justin Green and Jennifer Wigal
- Air Quality: Ali Mirzakhali
- Land Quality: Lydia Emer

Following the division presentations, Bennett described the engagement and outreach DEQ has done, and will do, as part of the development of the Agency Request Budget for 2019-21. Director Whitman provided additional detail and contextual information throughout the presentation. The commissioners asked questions about the budget details, agency priorities and budget implementation throughout the presentation.

Q. Informational item: EQC annual survey and Key Performance Measure

Nancy Bennet, Policy and External Affairs manager, introduced this item and provided an overview of the results. Stephanie Caldera, EQC assistant, provided additional detail on the results of the survey,

administered in June 2018. Commissioners provided their feedback on the survey and opportunities for increased engagement on specific issues over the next year.

R. Informational item: Commissioner officer and liaison roles

Director Whitman provided background on the intent of this informational and discussion item. Director Whitman described the functions of the roles and the commissioners discussed their interests in officer and liaison roles.

Based on commissioner discussion and input from legal counsel, the commission took a formal action to appoint the OWEB representative and concurred on the liaison roles for the Board of Forestry, Board of Agriculture and Water Resources Commission.

Action: Appoint Commissioner Molly Kile as EQC representative to the Oregon Watershed Enhancement Board

Move: Commissioner Mosby

Second: Commissioner Addington

The commission unanimously approved the action

The commissioners concurred that Commissioner Wade Mosby, with support from Commissioner Baraso, would serve as liaison to the Board of Forestry. They also concurred that Commissioner Addington would be the contact for Board of Agriculture and the Water Resources Commission, but not in a formal liaison role. The commissioners will revisit their liaison decisions in a year. The commission will take action for chair and vice-chair roles at the September 2018 meeting.

S. Informational item: Commissioner reports

Commissioners provided verbal updates of their recent activities.

Commissioner Mosby noted a very low snowpack level in the southern Cascades, with a caution about smoke and wildfire conditions for the summer. He also expressed concerns about increased pollution due to vehicle emissions associated with local roads instead of highways if highway tolling is implemented in Portland. Director Whitman responded about the tolling issues and noted that state agency directors are meeting to ensure alignment on public health, environmental and quality-of-life issues associated with tolling.

Commissioner Kile recently went to Harney County for community-based water planning with Paige Evans, DEQ lab staff. She complimented Evans and DEQ staff for their engagement and good relationships in the field. She also recently organized a Tribal Environmental Health Summit with 130 attendees in Corvallis.

Commissioner Addington noted that Klamath Basin water issues may be in the news soon due to pending court decisions regarding use and access.

Commissioner Baraso stated that he has received inquiries regarding the commission's role for next steps in response to the NW Metals fire in northeast Portland.

Commissioner George reflected on the tour of Portland Harbor, noting that it was incredibly important to be on the river. She noted that it is lamprey harvest season and Willamette Falls is the community harvest location for lamprey, which reinforces the importance of the cleanup due to the relationship between the cleanup site of Portland Harbor and traditional harvest for important first foods.

Commissioner George adjourned the commission at 3:45 p.m.

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PUBLIC TESTIMONY: The Environmental Quality Commission places great value on information received from the public. In addition to a formal public comment time scheduled at each meeting as Public Forum, the commission accepts both oral and written comments on some agenda items, as shown on the agenda with an asterisk (*). If you wish to provide comment to the commission, you must sign-up on the specific sheet provided at the information table, located near the meeting room's entrance with other meeting materials. Please limit comments to three minutes or less. The commission may shorten or extend any item, including the comment opportunities, at its discretion.

People wishing to present comment to the commission are encouraged to:

- Provide written summaries of lengthy, detailed information
- Recognize that substance, not length, determines the value of verbal comments or written information
- Endorse rather than repeat the comments of others

Written comments can be submitted before or during the meeting. Please bring 10 copies of any written comments and provide them to the commission assistant to distribute to the commissioners during your comments.

2018 EQC meetings

- September 13-14: Klamath Falls
- November 15-16: Portland

For questions about the agenda or any commission matters, please contact Stephanie Caldera, EQC assistant: Caldera.Stephanie@deq.state.or.us or 503-229-5301.