



State of Oregon Department of Environmental Quality

# Oregon Environmental Quality Commission meeting

401<sup>st</sup> regular meeting

Nov. 15-16, 2018

PSU Native American Student and Community Center  
710 SW Jackson Street, Portland

**Thursday, Nov. 15, 2018: 10:30 a.m. to 6:30 p.m.**

Chair George convened the meeting at 10:30 a.m.

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

**A. Action item: Meeting minutes**

Commissioners reviewed the proposed draft minutes from the Aug. 27, 2018, special meeting and Sept. 13-14, 2018, regular EQC meeting.

**Action:** Approve the minutes as presented

**Move:** Commissioner Mosby

**Second:** Vice-chair Baraso

*The commission unanimously approved the Aug. 27, 2018, special meeting and Sept. 13-14, 2018, regular meeting minutes as presented*

**B. Action item: Hazardous waste delisting proposal**

Brian Fuller, Western Region Hazardous Waste manager, introduced the item. Dan Lobato and Seth Sadofsky, Hazardous Waste staff, co-presented this action item.

Fuller provided background information about the proposed action. He described Oregon's Hazardous Waste program, operated by DEQ under federal RCRA authorization. Dan Lobato explained some of the definitions and background related to the proposed delisting action and described the statutes and rules governing the delisting process. Lobato described the process and timeline the facility followed to request the delisting and DEQ's public comment process for the delisting request.

Seth Sadofsky described the technical analyses DEQ used in evaluating the delisting request and provided additional details about the proposal. Commissioners asked clarifying and informational questions throughout the staff presentation.

**Action:** Approve the proposed rule amendments, as seen on pages 17 through 19 of the staff report for this item, as part of Chapter 340, Division 101 of the Oregon Administrative Rules.

**Move:** Commissioner Mosby

**Second:** Vice-chair Baraso

*The commission unanimously approved the rules as presented*

### **C. Informational item: Budget and legislative updates**

Nancy Bennett, Policy and External Affairs manager, and Annalisa Bhatia, **double check her title?**, presented an update budget processes and legislative information. Bennett described the outcomes of the November 6 election and the timelines for budget development entering the 2019 Oregon Legislative Session. Director Whitman provided additional detail about elections and legislative information from Washington and California.

Bhatia discussed the outcomes of the September Legislative Days, including DEQ's presentations to various committees and requests to the Legislature's E-Board for budget allocations. She noted that the Oregon Legislature will have additional pre-Session organizing days before February 2019 and DEQ will bring updates to the January 2019 EQC meeting. Commissioners asked clarifying and informational questions throughout the presentation. Director Whitman provided additional detail on budget processes and legislative items.

### **Working lunch and executive session**

The commissioners, DEQ staff and Oregon Department of Justice staff met for an executive session over a working lunch from approximately 11:45 a.m. to 1 p.m. This executive session was held under the authority of ORS 192.660(2)(h) and (i). The commission reconvened for item D at approximately 1:20 p.m.

### **D. Action item: Clean Fuels Program proposed rules**

Ali Mirzakhali, Air Quality Division administrator, introduced the item. Cory-Ann Wind, Clean Fuels Program manager, provided a program update and highlighted successes of the program in its first two years. She outlined the general trends of the program, including overall decreases in the carbon intensity of the fuels used in Oregon. Bill Peters, Clean Fuels Program analyst, presented information about the proposed rule amendments. He described the proposed changes to the rules, including the addition of two fuel types, renewable jet fuel and renewable propane. Commissioners asked clarifying and informational questions throughout the presentation.

**Action:** Adopt the proposed rule amendments for the Clean Fuels Program as seen on pages 31 through 144 of the report for this item as part of Chapter 340 of the Oregon Administrative Rules.

**Move:** Commissioner Kile

**Second:** Commissioner Mosby

*The commission unanimously approved the rules as presented*

**E. Action item: LEV-ZEV Program proposed rules**

Ali Mirzakhilili, Air Quality Division administrator, introduced the item and explained that the state's goals for greenhouse gas reductions are supported by activities like Clean Fuels and the Low Emission Vehicle and Zero Emission Vehicle programs at DEQ. Rachel Sakata, Air Quality planner, provided background information on the program and past commission actions for the program.

Sakata described the proposed rule updates and the related actions at the federal and state level. She noted DEQ's advisory committee and public comment process. Commissioners asked clarifying and informational questions throughout the presentation.

**Action:** Adopt the proposed rules as seen on pages 31 through 39 of the report for this item as part of Chapter 340 of the Oregon Administrative Rules.

**Move:** Commissioner Kile

**Second:** Vice-chair Baraso

*The commission unanimously approved the rules as presented*

**F. Action item: Asbestos Program proposed rules**

Ali Mirzakhilili, Air Quality Division administrator, introduced the item and the presenters. Jaclyn Palermo, Air Quality manager, presented an overview of the DEQ Asbestos Program and background information about the proposed rules. Michele Martin, Operations and Policy analyst, described the proposed rules and the agency's development process including public comment and DEQ's commitment to public outreach if the proposed rules are approved. Commissioners asked clarifying and informational questions throughout the presentation.

**Action:** Adopt the proposed rules as seen on pages 48 through 98 of the report for this item as part of Chapter 340 of the Oregon Administrative Rules.

**Move:** Vice-chair Baraso

**Second:** Commissioner Mosby

*The commission unanimously approved the rules as presented*

**G. Action item: Cleaner Air Oregon Program proposed rules**

Leah Feldon, Deputy Director, introduced the item and provided background information. She noted that the proposed rules are the combined effort of DEQ and Oregon Health Authority staff to fulfill the objectives of the Cleaner Air Oregon Program as begun by Governor Brown in 2016. Ali Mirzakhilili, Air Quality Division administrator, described health-based air toxics programs used in other states, including California, Washington and Idaho. He outlined the development timeline and process, including various advisory committees and two public comment periods since summer 2016.

Keith Johnson, Special Advisor to the DEQ Director for Cleaner Air Oregon, described the public process DEQ used as it developed the proposed rules and program. He noted that the Oregon Legislature adopted Senate Bill 1541 during the 2018 Legislative Session, which set some specific parameters for the program in statute.

Gabriela Goldfarb, OHA Environmental Public Health Section manager, presented about the health effects of air toxic emissions, noting that state and federal regulations currently have gaps for some air toxics, which the Cleaner Air Oregon program and rules are proposed to reduce. She described health equity and environmental justice elements included in the proposed rules, especially as the proposed rules address the disproportionate burdens of air toxics for communities of color, low-income communities and people under 5 years old. Goldfarb outlined how the Cleaner Air Oregon risk analyses and program regulations would work, if approved by the commission.

Johnson described how the proposed rules and program would protect human health and the environment. He described the proposed Risk Action Levels, and noted that many of the levels were set in law by Senate Bill 1541. Johnson described the process a facility would use under the proposed Cleaner Air Oregon regulations, and DEQ's actions for review and approval points throughout the process. Johnson described the community engagement requirements within the proposed rules and noted that the proposed rules include flexibility in the ways facilities can comply with the regulations. Johnson described the proposed fee and funding mechanisms for the program, including positions approved at DEQ and OHA for the Cleaner Air Oregon work. He also described key issues in the development of the proposed rules, and the ways DEQ would address these issues in any approved program.

Mirzakhaili described the proposed steps for implementing the Cleaner Air Oregon rules. He described actions that DEQ and OHA would take if the rules are approved, and future rulemaking steps that would be necessary for the program's operations. Feldon described reporting requirements for DEQ to the commission and the Oregon Legislature, and noted her thanks for the commission's ongoing interest and engagement with the proposed program elements.

The commissioners asked clarifying and informational questions throughout the presentation, in addition to their feedback and direction to DEQ for elements of the program.

At the close of the staff presentation, Deputy Director Feldon specifically thanked the DEQ and OHA staff who have worked on this program since it began in April 2016. Following that, commissioners asked additional questions and provided their comments about the proposed rules, implementation elements and agency activities related to the proposed Cleaner Air Oregon program and rules. Director Whitman provided additional comments about the proposed rules, the partnership between DEQ and OHA, the way the proposed rules connect to other work done by the agency and the need for continued learning related to air toxics.

**Action:**

1. Adopt the proposed rules in Attachment A included with the staff report for this item, and the proposed rule amendments in Attachment B included with the staff report for this item, as part of chapter 340 of the Oregon Administrative Rules, and adopt the proposed changes to the DEQ source sampling manual in Attachment D included with the staff report for this item;

2. Approve incorporating the proposed rule amendments in Attachment B included with the staff report for this item that amend OAR chapter 340, divisions, 12, 200, 209, and 216, with the exception of all references to toxic air contaminants, into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040;
3. Direct DEQ to submit the SIP revision to U.S. EPA for approval;
4. Direct DEQ to prepare reports consistent with Attachment I included with the staff report for this item

**Move:** Vice-chair Baraso

**Second:** Commissioner Kile

*The commission unanimously approved the actions as presented*

#### **H. Discussion: The Portland Basin from a Tribal Perspective**

Starting at 5 p.m., David Harrelson, of the Kalapuya Tribe and the Grand Ronde Tribe's Cultural Resources manager, led an evening discussion and workshop about the people, places, and practices of the indigenous people of the Portland Metro area. This discussion item was structured as a less formal opportunity for engagement for the commissioners and public.

*Chair George recessed the commission at approximately 6:30 p.m. until 9 a.m. on Friday, Nov. 16, 2018. Commissioners and DEQ staff attended an informal social dinner in Portland on Thursday evening. No commission business was conducted at the dinner.*

#### **Friday, Nov. 16, 2018: 9 a.m. to 3:30 p.m.**

*Chair George reconvened the commission meeting at approximately 9 a.m.*

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

#### **I. Informational item: Water Quality Programs and mercury reduction**

Jennifer Wigal, DEQ Water Quality Deputy administrator, introduced this item. She explained that DEQ will be engaging with multiple actions related to mercury over the next year, and the presentation is to provide early information about these activities. Wigal provided background information about DEQ's strategies to address mercury in water and other programs. Wigal described the ways that mercury enters Oregon's waters, noting that much of the mercury in Oregon water sources are not controllable by DEQ's regulatory and voluntary programs.

Chris Eckley, EPA Region 10 Environmental Scientist, described the types of mercury found in the environment and the science behind mercury in Oregon's environment. He explained that much of the mercury found in Oregon is from sources outside of the state, and country, and that the landscape has a large impact on how much mercury enters the soils and water and becomes the methylated form that effects humans.

Kevin Masterson, DEQ Toxics specialist, discussed programs that DEQ operates and implements to reduce toxics, including mercury, across the agency. He noted that mercury is on DEQ's Focus List

for cross-program toxics reduction and described some of the air and land-based mercury reduction efforts at the agency. He also noted preventative activities at the state level to restrict the introduction of mercury into consumer products since the 1990s and DEQ's related program actions. He noted that DEQ will return to the January 2019 EQC meeting to present an update on the agency Toxics Strategy, which does include mercury reduction efforts.

Raj Kapur, Association of Clean Water Agencies co-chair and Clean Water Services staff, presented on municipal wastewater facilities across the state and the processes and technologies facilities use to reduce mercury in their effluent, which is discharged back into Oregon's water systems. He described mercury minimization plans and activities developed by Clean Water Services, and the effects of those activities to reduce incoming mercury in addition to treatment processes to reduce outgoing mercury. Kapur discussed the ways treatment facilities manage mercury and the technological and design limits of the facilities to meet the proposed limits of the revised mercury TMDL for the Willamette Basin. Kapur also discussed the reduction of mercury through municipal stormwater management and the DEQ MS4 program.

Mike Powers, ODA Agricultural Water Quality Program, discussed non-point source controls for mercury on agricultural lands across the state. He noted that the primary controls relate to erosion control and the management of agricultural lands to minimize soil disturbance from farming practices.

Mike Brown, Bureau of Land Management, discussed the ways that federal land management activities can help reduce erosion and runoff that contributes mercury to Oregon's waters. He noted that BLM is a Designated Management Area, and cooperates with DEQ through a Memorandum of Understanding for the administration of 16 million acres of land across the state. He described the design, management practices, aquatic restoration and monitoring activities that the Bureau engages in for overall mercury control and reductions. Brown explained that the majority of mercury found on BLM lands in the Willamette Basin relate to erosion and sediment runoff from roads in forested lands.

Jennifer Wigal, DEQ Water Quality Deputy Administrator, introduced DEQ staff working on mercury-related water regulations and activities. Paula Calvert described the 2006 Willamette Basin Mercury TMDL and the revision that DEQ is currently working on for this TMDL. She discussed the process DEQ is using for the development of the revised TMDL, noting that DEQ intends to ask for an extension to the April 2019 deadline to ensure additional time for analysis and meaningful public engagement.

Wigal provided additional information about how DEQ uses its NPDES permitting authority when the standards and requirements are likely below levels that are currently achievable by point sources across the state. Aron Borok presented about variances, one tool available under the federal Clean Water Act when the standards cannot be met within the specified timeframe. He explained that DEQ could pursue permit-specific variances or a multi-discharger variance that covers multiple source permits within specified parameters. Borok noted that the proposed multi-discharger variance for mercury in the Willamette Basin will be presented for commission action, but the permit-specific

variances can be issued by DEQ as a permit action, with both types needing EPA approval before they may become effective. He described the objectives of any variance, and the requirements for the agency and sources for any variances.

Wigal summarized the presentation and the agency's next steps for mercury reductions in Water Quality Programs. Commissioners asked clarifying and informational questions throughout the presentation and offered their feedback and direction to DEQ on this topic.

***Comment opportunity for item I***

Following the staff presentation, the commission opened a short public comment opportunity specific to the information and issues discussed during Item I. Two people signed up to present comment.

1. Dale Feik, Hillsboro resident, thanked the presenters for their information and noted his prior involvement with several DEQ committees and workgroups for water issues. He provided his input on the discussion presented during Item I.

2. Heath Curtis, Oregon Forest Industries Council, noted OFIC's concerns regarding the mercury permit limits and other information presented during Item I.

**J. Informational item: Oregon Smoke Management Plan updates**

Michael Orman, Air Quality manager, introduced this item. He noted that the presentation will focus on the process to-date to update the Oregon Smoke Management Plan and policy considerations for that Plan and program prior to a January 2019 proposal for commission action. Doug Grafe, Department of Forestry, discussed the timeline for the Plan's review and update, including the advisory committee and public comment process. Gabriela Goldfarb, OHA Environmental and Public Health Section manager, discussed the health issues associated with smoke and the engagement of OHA in the development of the revised Plan.

Goldfarb noted that OHA supports the proposed revised Oregon Smoke Management Plan, and described the short-term health effects from smoke and particulate matter that are a critical reason for this support. Orman discussed the proposed revisions to the Oregon Smoke Management Program and Plan and the science and policy analyses that support the proposed revisions.

Orman discussed the proposed community engagement and communications requirements in the revised Plan, and reflected on the extensive public comment period that Forestry and DEQ jointly held for the revisions. Goldfarb explained that the OHA support for the one-hour threshold does recognize that is a policy decision to be protective of human health and discussed the ongoing engagement of OHA with these issues.

Commissioners asked clarifying and informational questions throughout the presentation.

## **Lunch**

*Chair George recessed the commission for lunch from approximately 12:20 to 1 p.m.*

## **K. Public forum**

At approximately 1 p.m., the commission opened a public comment opportunity. People were able to present comment or listen by connecting via toll-free telephone conference line or in-person at the meeting.

Five people presented comment.

1. Dale Feik, Hillsboro Air and Water, presented comments regarding the commission's action to adopt the Cleaner Air Oregon rules at the Nov. 15, 2018, EQC meeting. He submitted a packet of materials to the commissioners for their consideration.
2. Ed Averill presented comments regarding fossil fuels and climate change, specifically concerns about methane. Averill provided a copy of presented materials for the commission
3. Adam Borgens, PPV, presented comments regarding wastewater treatment and explained that his company is concerned about a municipal site in Salem that is permitted by DEQ, and which may be violating elements of its permit and threatening human health and the environment.
4. Karen Thebault, The Nature Conservancy, presented comments regarding the Oregon Smoke Management Plan proposed updates, generally and specific to the potential proposed exemption process for the Plan. Thebault provided a copy of presented materials for the commission.
5. Clair Klock presented comments regarding the proposed Oregon Smoke Management Plan revisions and forest management, generally.

Chair George closed the public comment period at approximately 1:20 p.m.

## **L. Informational item: Director's report**

Director Whitman presented about issues and activities of interest to the commission. He discussed many of the items included in the written report for this item and provided additional contextual details. Deputy Director Feldon provided an update on the DEQ Toxics Reduction Strategy, noting that DEQ intends to bring an informational item on the Strategy updates to a commission meeting in early 2019.

## **M. Informational item: Commissioner reports**

Commissioners presented verbal updates about their recent activities and commission-related information.



Commissioner Mosby discussed his role as the liaison to the Board of Forestry and that board meeting he attended last week. He also noted that he is on the Business Oregon Finance Committee, which approved a new waste management facility at the Intel facilities in Hillsboro.

Commissioner Kile discussed her role as the commission assigned to the OWEB board and her experience at that meeting last month. She added that a national report was released yesterday related to Agent Orange with a finding that dioxins are related to hypertension in a definitive way.

Commissioner Addington explained that he recently met with Stephanie Page, from the Oregon Department of Agriculture, to discuss ODA's rules and relationship to DEQ.

Chair George noted that she intends to attend portions of the Board of Agriculture meeting later this month. She also explained that she and Commissioner Kile were both contacted about an Oregon Solutions project for electric vehicles but they are unable to participate at this time.

*Chair George adjourned the meeting at approximately 2 p.m.*



State of Oregon Department of Environmental Quality

# Oregon Environmental Quality Commission meeting

## Special meeting

*Dec. 4, 2018*

*DEQ Office: 700 NE Multnomah Street, room 601  
Portland*

### **Tuesday, Dec. 4, 2018. 3 p.m.**

*Chair George convened the meeting at 3 p.m.*

- Present: Chair Kathleen George\*, Vice-chair Sam Baraso, Commissioner Greg Addington\*, Commissioner Molly Kile\* and Commissioner Wade Mosby\*

*Note: An asterisk (\*) denotes participating by telephone conference line*

### **A. Action item: Proposed temporary rules for Oregon Clean Vehicles Rebate Program**

Director Whitman and Ali Mirzakhilili, Air Quality Division administrator, provided introductory information about the program and proposed temporary rules. Rachel Sakata, Air Quality Planner, described the content of the proposed temporary rules.

The commissioners asked clarifying and informational questions about the proposed temporary rules and next steps for the Oregon Clean Vehicles Rebate Program.

**Action:** Determine that failure to act promptly would result in serious prejudice to the public interest or the interests of the parties concerned as provided under the Justification section of the staff report for this item; and adopt temporary rules, as seen in Attachment A to the staff report for this item, as part of chapter 340 of the Oregon Administrative Rules to be effective on filing with the Oregon Secretary of State.

**Move:** Commissioner Mosby

**Second:** Commissioner Kile

*The commission unanimously approved the temporary rules as presented*

*Chair George adjourned the meeting at 3:30 p.m.*

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