



State of Oregon Department of Environmental Quality

# Minutes: Oregon Environmental Quality Commission meeting

418<sup>th</sup> regular meeting: Feb. 3-4, 2022

**Thursday, February 3: Working lunch and executive session 12:15 to 1 p.m.,  
regular meeting 1 to 4 p.m.**

## Executive session

The commission held an Executive Session from 12:17 to 12:50 p.m. as part of a working lunch and pursuant to ORS 192.660(2)(f) and (h). Commissioners, representatives from the Oregon Department of Justice and some DEQ staff attended the session.

## Meeting open and welcome

Chair George convened the regular meeting at 1:01 p.m.

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

## A. Draft meeting minutes (Action)

Commissioners reviewed the Nov. 17-18, 2021, regular and Dec. 16, 2021, special EQC meeting minutes.

**Action:** Approve the Nov. 17-18 and Dec. 16, 2021, EQC meeting minutes as presented

**Move:** Commissioner Kile

**Second:** Vice-chair Baraso

*The commission approved the action unanimously*

## B. Commissioner reports (Informational/discussion)

Chair George provided an overview of the liaison roles established between EQC and the Boards of Forestry and Agriculture. Commissioner Kile described her work as the EQC member on OWEB, a statutory and voting seat on that board, and welcomed other commissioners to serve that role as she remains as the chair of the DEQ Internal Audit Committee. Director Whitman provided additional contextual information about expected workload and meeting frequency for liaison positions with the Oregon Boards of Agriculture and Forestry, and commissioners discussed their interest in the roles.

- Commissioner Schlusser – Board of Forestry
- Vice-chair Baraso – Board of Agriculture
- Commissioner Kile – DEQ Internal Audit Committee, chair (continuing her current role)
- Commissioner Addington – Tentatively OWEB, but to discuss with DEQ and OWEB staff

Commissioners committed to finalize the roles at the next EQC meeting, intending to be the distribution of roles outlined in discussion as seen above.

Commissioners provided verbal updates on their recent activities of interest for EQC and DEQ.

- Commissioner Kile provided updates on the OWEB meeting held in January, at which the board made decisions on a variety of grant funding statewide, and provided updates on the Oregon Tide Gate Partnership project. She noted that her role at OSU will include new research into children’s environmental health data.
- Chair George noted that she recently attended a meeting regarding statewide housing crisis with county officials and the issue of contamination and cleanup from drug labs in residences was discussed, something on which DEQ coordinates with other state agencies as part of its Emergency Response Program.
- Commissioner Addington requested an update on the status of Lake Abert restoration efforts, and more information generally about the agency’s Internal Audit Committee.

### **C. 2018-2028 Regional Haze State Implementation Plan (Action)**

Ali Mirzakhali, Air Quality Division Administrator, introduced this action item. Karen Williams, Air Quality Planner, described Oregon’s Regional Haze Program and applicable rules. Williams described the structure and content of the 2018-2028 Regional Haze State Implementation Plan, including the consultation and engagement processes DEQ used to solicit input and review from federal, Tribal, state, local and community partners. Michael Orman, Air Quality Manager, provided additional information about the program and 2018-28 Plan. Commissioners asked clarifying and informational questions throughout the presentation.

#### **Action:**

- Adopt the 2018-2028 Regional Haze State Implementation Plan; included as Attachment D; and
- Approve incorporating the 2018-2028 Regional Haze State Implementation Plan into the Oregon Clean Air Act State Implementation Plan adopted under OAR 340-200-0040; and
- Adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules, to reflect the amendment of the Oregon Clean Air Act State Implementation Plan; and
- Direct DEQ to submit the approved 2018-2028 Regional Haze State Implementation Plan to the U.S. Environmental Protection Agency for approval.

**Move:** Commissioner Schlusser

**Second:** Commissioner Kile

*The commission approved the action with three in support (Schlusser, Kile, Baraso) and one in opposition (Addington)*

#### **D. TMDLs by rule (Action)**

Jennifer Wigal, Water Quality Division Administrator, introduced the item and provided an overview of TMDLs, generally. Michele Martin, Water Quality Division Project Manager, discussed the proposed rulemaking schedule and DEQ's engagement methods for TMDL development. Gene Foster, Water Quality Watershed Programs Manager, discussed DEQ's reasons to propose rule revisions that would allow TMDLs to be issued by EQC rulemaking action, as allowed by statute, in addition to the current practice of issuance by DEQ Order. Martin presented additional details about the proposed changes and details of the proposal.

Commissioners asked clarifying and informational questions throughout the presentation. Director Whitman noted that DEQ will return to a future EQC meeting to present which TMDLs are recommended for EQC action versus those that will be issued by DEQ Order.

**Action:** Adopt the proposed rules as seen in Attachment A of the staff report for this item as part of Chapter 340, division 42 of the Oregon Administrative Rules.

**Move:** Commissioner Kile

**Second:** Commissioner Schlusser

*The commission approved the action with three in support (Schlusser, Kile, Baraso) and one in opposition (Addington)*

#### **E. Public forum**

Chair George opened the public forum at 3:30 p.m. and Stephanie Caldera, Commission assistant, provided verbal and on-screen directions for attendees who wished to sign up to present comment. Three people presented comment.

1. Dale Feik, Washington County Citizen Action Network, provided comments regarding items in the Director's report for this meeting.
2. Ben Kirsch, Deschutes River Alliance, requested information regarding the follow-up to the October 2021 denial of a petition from DRA regarding water quality issues in the Deschutes Basin.
3. Susana Gladwin, Clatsop County Soil and Water Conservation District, requested support for more air quality monitors and more available information regarding aerial pesticide application and related water quality issues in Clatsop County.

Chair George closed the public forum at 3:40 p.m.

#### **Recess**

Chair George recessed the commission at approximately 3:40 p.m. until 9 a.m. on Friday, Feb. 4, 2022.

## Friday, February 4: 9 a.m. to 12:30 p.m.

### Meeting open and welcome

Chair George reconvened the regular meeting at 9:03 a.m.

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

### F. 2022 Legislative Session updates (Informational)

Nancy Bennett, Office of Policy and External Affairs Manager, described the hybrid in-person/remote structure of the 2022 Oregon Legislative Session, which started February 1 for a 35-day session, and provided an overview of changes to leadership and committee membership since the previous Session. Bennett described DEQ's budget requests and key legislative matters being tracked by the agency. Director Whitman provided additional detail on some legislative items of interest to DEQ and the commission. Jennifer Wigal, Water Quality Division Administrator, described next steps for the Private Forest Accord, completed in late 2021.

### G. 2023-25 Agency Request Budget development (Informational)

Nancy Bennett, Office of Policy and External Affairs Manager, introduced the item and described the structure of the presentation. Bennett described the biennial budget development process and cycle, noting the DEQ budget figures over the past 20 years. She discussed DEQ's budget and legislative priorities for the 2023 Oregon Legislative Session.

Matt Davis, Air Quality analyst, discussed the budget goals for the Air Quality Division. Rian Hooff, Water Quality Policy and Legislative Analyst, discussed the budget goals for the Water Quality Division. Abby Boudouris, Land Quality Policy and Legislative Analyst, discussed the budget goals for the Land Quality Division. Commissioners asked clarifying and informational questions throughout the presentations.

Director Whitman provided additional detail about some items. Bennett described additional cross-program goals and legislative developments for the 2023 Session. She noted the agency's draft schedule for public engagement, starting in February 2022, as DEQ's develops its initial budget and legislative requests. Commissioners provided specific feedback on their priorities for DEQ's 2023 budget and legislative agenda.

### H. 2022 rulemaking agenda (Informational/discussion)

Nancy Bennett, Office of Policy and External Affairs Manager, introduced the item and explained that the presentation will focus on the rules expected for commission action in 2022, and will be an annual presentation, generally in late winter, to provide a regular opportunity for commissioners to provide feedback on agency rule development processes.

Emil Hnidey, Agency Rules Coordinator, provided an overview of the timelines and steps associated with rulemakings, and procedural requirements DEQ must complete prior to making policy and rule recommendations to EQC. Director Whitman described some of the near-term rulemaking items that will be brought to the commission and Bennett asked commissioners for their input on the 2022 Agency Rulemaking Plan.

Commissioners discussed their feedback on the 2022 rulemaking agenda and asked clarifying and informational questions. The commissioners noted their intent to provide additional feedback at the next meeting on ways they want to be engaged with particular rulemakings and provide general process feedback for rulemakings.

### **Recess**

Chair George recessed the commission from 11:05 to 11:15 a.m.

### **I. Delegating specified rulemaking authority to DEQ director (Action)**

Director Whitman introduced this item and described the proposal for the commission to delegate rulemaking authority to him for two specific rule proposals in 2022, instead of the rules being presented for commission action. Gary Vrooman, Oregon Department of Justice and EQC legal counsel, provided details on the relevant legal authorities for the proposal. Commissioners discussed the proposal, including details of the two rules proposed for delegation, and asked clarifying and informational questions.

**Action:** Delegate the following two 2022 rulemakings, as described in Attachment A to Agenda Item H, to the DEQ Director for a decision: (1) the 2022 Title V CPI Phase II Fee Increase Rules; and (2) the 2022 Hazardous Waste Rules.

**Move:** Vice-chair Baraso

**Second:** Commissioner Schlusser

*The commission unanimously approved the action.*

Following the commission decision, Director Whitman noted that DEQ will update the required form, which must be signed by Chair George and filed with the Secretary of State, to document the specific delegation.

### **J. Director's report (Informational)**

Director Whitman provided responses to several items that were raised during the public forum portion of the meeting, or in response to commissioner requests:

- Lake Abert water quality issues, lake health and wildlife issues
- Scheduling the discussion regarding water quality issues in the Deschutes Basin
- Additional monitors for wildfire smoke, statewide, and current rulemaking by OSHA and DCBS related to worker protections and exposures to smoke during wildfire events

Director Whitman and Deputy Director Feldon also provided updates on items in the written report for this item and additional verbal highlights.

- Port of Morrow: Groundwater concerns in that region, including recent enforcement action by DEQ
- J.H. Baxter facility in Eugene: Contamination of nearby soil from facility operations, recent enforcement action by DEQ and the facility’s intention to cease operations and close
- Zenith oil facility in Portland: Recent legal clarifications regarding the rejection of the facility’s land use compatibility statement, from the City of Portland

Commissioners asked clarifying and informational questions about topics in the written report for this item and the verbal additions. Chair George asked for more detail on the Aquatic Life Criteria rulemaking planned for later in 2022. Director Whitman and Jennifer Wigal, Water Quality Division Administrator, provided clarification on that rulemaking.

Commissioners discussed the potential rescheduling of the next EQC meeting, due to scheduling conflicts, and tentatively agreed to reschedule to April 6 and 7, with confirmation to follow by email.

**Adjourn**

Chair George adjourned the meeting at 12:25 p.m.