

**Minutes of the three hundred and fifty-second  
Oregon Environmental Quality Commission Meeting  
October 22-23, 2009**

**Mt. Scott room at the Oregon Institute of Technology  
Klamath Falls, OR**

**The following members of the Environmental Quality Commission were present:**  
Chair Blosser, Vice chair Williamson, Commissioner Dodson, Commissioner O’Keeffe  
and Commissioner Uherbelau

**Chair Blosser convened the meeting at 8:30 a.m. on Thursday, Oct. 22, 2009.**

**A. Preliminary Commission Business: Adoption of minutes of the August 20-21,  
2009 regular meeting**

The commission reviewed the minutes from the August 20-21, 2009, regular EQC  
meeting, and Commissioner Uherbelau noted one typographical error on page three.

**Action:** Approve the minutes with the correction as noted.

**Move:** Commissioner Uherbelau

**Second:** Commissioner Dodson

*Passed unanimously*

**B. Informational Item: Update on the status of the Umatilla Chemical Agent  
Disposal Facility**

Joni Hammond, deputy director, and Rich Duval, chemical demilitarization program  
administrator, updated the commission on the status of the agent disposal program at the  
Umatilla Chemical Agent Disposal Facility. Duval and Hammond connected to the  
meeting via conference phone.

Duval explained that the facility had nine emission limit violations during the first stage  
of its mustard agent trial burn. He noted that the violations were due to mustard agent in  
ton containers boiling over when in the furnace. No people were exposed to the mustard  
agent. DEQ’s Office of Compliance and Enforcement is reviewing the violations for  
formal enforcement action. The facility evaluated the incidents, and has since processed  
twenty one-ton containers without any mustard agent boiling over.

Duval explained that DEQ completed the public comment period for the facility’s Title V  
air permit, and has sent the information to the U.S. EPA for review. Duval also explained  
that the facility would complete processing the mustard agent in Jan. 2011, pending  
approval of permits. He noted that a chemical demilitarization facility in Utah  
experienced the same malfunction of control equipment and subsequent mercury  
emissions. The cause of the bypass valve leak in Utah was the same as for Umatilla, and  
that facility was able to quickly diagnose and repair the issue and continue processing  
materials.

**C. Item was postponed until December 2009**

**D. Informational item: DEQ's toxics reduction strategy**

Director Pedersen introduced the item as the first comprehensive presentation to the EQC about the agency-wide toxics reduction strategy. Kevin Masterson, agency toxics coordinator, gave an overview of the agency-wide toxics reduction strategy, explained DEQ's seven strategic steps, and discussed elements of communications plans. Masterson explained that cross-program team of 16 DEQ staff have met since June 2009 to develop a strategy and worked with an external group to generate ideas and processes for the strategy. He stated that the groups will have a draft strategy by March 2010 and present to the commission for review and approval in April 2010.

Masterson described the process and products of the strategy. The commission discussed next steps and expected outcomes, as well as opportunities for potential rules and public involvement to strengthen the strategy. Director Pedersen commented that the most difficult work for DEQ is how to apply an agency approach to toxics and move beyond individual and program-based projects.

Jennifer Wigal, water quality manager, described work related to the 2007 Senate Bill 737. The bill directed DEQ to identify and reduce persistent or bioaccumulative pollutants found in the effluent of Oregon's 52 largest municipal wastewater treatment facilities. Wigal explained that DEQ submitted the final list of pollutants to the Legislature this week. The list contains nearly 120 pollutants, of which 50 are on the agency's cross-program toxics focus list. DEQ will now evaluate if the pollutants are present in Oregon's environment. Wigal stated that DEQ plans to bring proposed rulemaking before the commission in summer 2010 as part of the monitoring and reduction strategies. The commission discussed next steps for the project, and ways to expand the process of this work beyond the 52 largest municipal wastewater treatment facilities. Wigal noted that the project is based on specific legislative direction, but that the work could be integrated into many elements of the agency-wide toxics reduction strategy.

Gregg Lande, senior air quality planner, presented information on DEQ's Portland-area air toxics solutions project and its role in the agency-wide toxics reduction strategy. Lande discussed the project's goals, outreach, strategies and its process to date. Lande noted that the project is a geographic approach to toxics reduction, and staff members have engaged people from a broad selection of Portland-area businesses, neighborhoods, organizations and associations. The commission discussed next steps for the project and the ways in which it connects to the agency goals and strategies of toxics reductions.

Deb Sturdevant, water quality standards coordinator, presented on the connections between the water quality standards program and aquatic human health criteria development. She noted that the water quality standards program plans a full informational update on the rulemaking in progress for human health criteria related to fish consumption in February 2010. Sturdevant outlined the EQC directives and processes for the rulemaking and discussed some tools that would help implement the

human health criteria rules and water quality standards. She explained that some necessary tools are authorized in rule, and many of the tools in the strategy require new approaches. Sturdevant also noted the ongoing collaborations with state agencies and other government partners, and that next steps include an expansive public outreach campaign before DEQ brings proposed rules to the commission in fall 2010. The commissioners asked questions about authorities for DEQ to use some programs and tools more broadly in the toxics reduction strategy. Sturdevant clarified that DEQ is reviewing current authorities to identify opportunities for implementation and development.

Palmer Mason, land quality legislative analyst, discussed methods and management strategies for toxics. He noted that the Legislature usually gives DEQ specific authority to implement certain projects or actions, and DEQ has the most authority over the release or discharge of a pollutant. The commission discussed ways in which to apply that authority in a broad sense, and work to manage pollutants before they enter Oregon's environment. Mason noted that DEQ is working on these issues in a number of ways, including the development of authority to regulate pollutants and chemicals as necessary. The commissioners discussed ways to partner with other agencies and organizations to address the manufacturing and production causes of many pollutants.

Chair Blosser invited public comment on this issue and presentation, and four audience members submitted request to speak forms.

1. Charlie Logue, of the Oregon Association of Clean Water Agencies, and Peter Ruffier, from the city of Eugene, distributed a handout and gave testimony regarding the agency-wide toxics reduction strategy. Ruffier noted that he has worked with DEQ and recognizes the hard work of the agency to effectively coordinate on toxics. He agreed with DEQ that reduction is an effective way to control pollution and that it is very important to address point and nonpoint sources in this effort. Logue added that it is very important all DEQ programs participate in an integrated toxics reduction approach. He asked the commission to be comprehensive in its policies and rules, and to work with other boards and commissions to build support for this work. Logue stated that trigger levels established through Senate Bill 737 must be achievable and measurable with standard analytical methods, and the human health criteria for fish consumption rates must be technically and economically feasible. Logue asked the commission members to reaffirm their directive on this rulemaking, and to ensure that all parties understand the intent of the process.

2. Don Gentry, from the Klamath Tribes' natural resource department, welcomed the commission to the homeland of the tribes, and expressed his optimism for the work being done in the area. He noted the need for DEQ and the commission to continue their work with the tribes when developing the human health criteria and standards for fish consumption, and thanked the commission for its good work thus far.

3. Kathryn VanNatta, from the Northwest Pulp and Paper Association and a member of DEQ water quality advisory committees for 15 years, submitted a copy of her comments

for the official record and offered testimony regarding the human health criteria for fish consumption rates. VanNatta stated that NWPPA has participated in the advisory committee for this issue, and feels that the commission's directive, from October 2008, has not been effectively and appropriately implemented by the staff and committee. She stated that the agency has made little progress in developing implementation tools and the actions of the staff and advisory committee do not satisfy the intent of the rule and commission's directive. VanNatta asked the commission to evaluate the advisory committee's language and tools, and to reevaluate the compliance costs since they are not achievable as stated in the committee's work. VanNatta noted that the NWPPA wishes to advise the commission that it has serious problems continuing to participate in the advisory committee if committee progresses in its current direction. Director Pedersen and the commission discussed VanNatta's comments.

4. Rick George and Kathleen Feehan, of the Confederated Tribes of the Umatilla Indian Reservation commended the commission as a representative body of the citizens of the state of Oregon, and noted that the EQC engages in good conversation and discourse. George thanked Director Pedersen and his staff for representing the state very well, and that the tribe thinks highly of the work DEQ is doing on toxics. He stated that the Tribal Council shares the commission's concern for rulemaking and need for equitable solutions, effective implementation tools and the authority to achieve toxics reduction in food sources and drinking water. He stated that the tribe is committed to continue in direct collaboration with DEQ to move this issue forward, and will continue to provide technical assistance and outreach assistance. Feehan added that the tribe remains completely committed to helping DEQ and affected sources create a meaningful package on toxics reduction. She commended DEQ staff, and noted that their groundbreaking work has been a product of a challenging and productive advisory and partner group interaction. Feehan stated that DEQ may need new tools and expertise to engage in solutions for toxics reduction, and the tribes want to work on meaningful solutions and bring new resources to the table.

#### **Lunch and Executive Session**

The EQC met in executive session over lunch from approximately 12:20 to 1:35 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), (h).

#### **E. Informational and Discussion Item: Oregon Toxics Report Year One**

Greg Pettit, DEQ laboratory administrator, gave opening remarks, and stated the importance of monitoring and data for the agency-wide toxics reduction strategy. Pettit asked the commissioners to consider the best ways to communicate the report's information to the public and to help the EQC make the best policy decisions.

Dennis Ades, laboratory water quality monitoring manager, described the objectives for the project, the background for the draft report, processes used, first-year accomplishments and future plans to monitor other basins across Oregon. Ades noted that

this project required new methods and tools for analysis and has increased DEQ's technical skills and abilities to analyze water quality data.

Jim Coyle, Willamette toxics basin assessment coordinator, discussed the project's approach and analytical targets. Coyle explained that the assessment analyzed fish tissue and water samples to understand what pollutants were present in the water and fish and described the methods for gathering samples. He stated that herbicides were the most commonly-found chemicals; there was fecal contamination at almost every site; and the basin has multiple low-level amounts of emerging contaminants. This information and other data informs DEQ plans, like the mercury water quality management plan for the basin, and as modeling elements to help DEQ better understand the results. Coyle stated that DEQ is working with state, federal and other government partners for the project, as well as environmental and resource conservation organizations. He asked the commission for feedback on the draft report, and stated that DEQ will finalize the report after receiving comments from partners and interested parties before starting a similar project in the Rogue Basin in 2010.

**F. Informational and Discussion Item: Draft Willamette Rivers and Streams Assessment Report**

Greg Pettit, DEQ laboratory administrator, introduced the item and noted that the draft report is the result of multi-year studies using many data sets and evaluating traditional indicators of watershed health. Aaron Borisenko, laboratory watershed assessment manager, noted that the draft report represents 14 years of cumulative experience doing this type of study and it is one of the best efforts like this nationwide. This report represents a new capacity for DEQ and others to analyze water quality in context with land use across a watershed.

Borisenko explained that the assessment evaluated data from over 15 surveys compiled by various governmental and non-governmental organizations that used the same methodology and processes. This analysis of 650 sites across the basin gave overall results of significant impairment of water quality in agricultural and urban settings, with temperature and streamside condition being major factors of water quality impairment.

Borisenko stated that the draft report shows that DEQ is working on the right kinds of management and protection plans, and that DEQ can improve how it implements projects and plans. The commissioners discussed the findings of the draft report, and provided feedback on outreach and communication opportunities for this information.

Director Pedersen stated that particular compliments should be paid to Greg Pettit, Aaron Borisenko, Dennis Ades, Jim Coyle, Joan Stevens-Schwenger and the communications staff for their work to create communication plans that allow people to react to the assessments and understand the data.

*Item taken out of order*

**H. Action Item: Clean Water State Revolving Fund Rulemaking**

Judy Johndohl, water quality community and program assistance manager, presented the proposed permanent rules for the Clean Water State Revolving Fund loan program. Johndohl reviewed the temporary rules that the commission approved in April, which are the basis for the proposed permanent rules. Johndohl explained that the temporary rules expire Oct. 28, 2009, and the commission must pass permanent rules in order to allow DEQ to administer the program with stimulus funding under the American Recovery and Reinvestment Act of 2009. Under this act, DEQ administered 13 loans, of which 11 have been executed and two remain in progress. Johndohl stated that key issues raised during the public comment period were the same as the temporary rulemaking, and addressed concerns with subsidization for loans and general project criteria.

**Action:** Adopt the proposed permanent rule revisions to OAR Chapter 340, Division 54, as presented in attachment A of this item.

**Move:** Vice chair Williamson

**Second:** Commissioner O'Keeffe

*Passed unanimously*

**G. Informational Item: Air Quality Attainment Plan in Klamath Falls**

Mitch Wolgamott, eastern region administrator, introduced the presenters and noted that this item represents a full-circle experience: he started with DEQ 25 years ago and attended a public hearing on air quality in Klamath Falls as one of his first duties with DEQ.. He stated that he can say with certainty that good work has been done in Klamath Falls and the community is looking at additional improvements based on more protective air quality standards for fine particulate matter.

Rachel Sakata, DEQ air quality planner, provided background information on the particulate matter standards and federal air quality attainment concerns in Klamath Falls. Larry Calkins, DEQ air quality specialist, recognized several audience members who have been working on air quality issues in the community. He also complimented Klamath Falls residents for their proactive efforts to take responsibility for air quality. Calkins explained that EPA has found Klamath Falls out of compliance with the fine particulate standard and therefore they must complete and implement an attainment plan by 2014.

Calkins explained contributors to nonattainment, as well as current reduction strategies in Klamath Falls. Sakata explained the proposed attainment timeline. John Elliot, Klamath County commissioner, presented information about the county's air quality ordinance and actions to improve air quality. Elliot asked the commission to be thoughtful when changing fine particulate matter standards, and urged them to consider changing the regulations for federal and state agencies that use burning techniques. He stated that while woodstoves and residential actions are a main factor in the daily air quality issues in Klamath Falls, forestry and agricultural burning contribute to the annual averages used to qualify nonattainment status for the area.

The commission discussed options for improvements to air quality in Klamath Falls, and ways to continue partnerships with the local community and county. Director Pedersen

noted that DEQ has an opportunity to collaborate with other state agencies for a coordinated response to air quality issues and planning for the best economic and social development for Oregon's communities.

**I. Town hall meeting on local environmental issues.**

The commission hosted a town hall-style meeting with residents, stakeholders, local officials and other interested persons to address issues of local concern. The town hall meeting is not a formal part of the commission agenda, and no minutes were taken. Notes from the discussion are available on DEQ's website or by request to the commission's assistant.

***Recess until Friday, Oct. 23, 2009***

**Friday, October 23 — Commissioner tour began at 8:30 a.m., regular meeting began at 10:30 a.m.**

**J. Tour**

The commissioners toured a brownfield redevelopment site in Klamath Falls, and learned about a technology to superheat soil in a way that removes simple contaminants like gasoline, diesel and oil. This technology, developed by Sisters-based Brady Environmental, is used domestically and internationally, and provides economic development through family-wage brownfield redevelopment jobs that were previously not possible due to technical limits and processes. The commissioners also learned about the geothermal heat and energy system at the Oregon Institute of Technology in Klamath Falls. The campus is the world's first university heated by geothermal energy, and a model of alternative energy development and education in Oregon. The tour lasted approximately two hours, and the regular meeting reconvened at 10:30 a.m.

**K. Informational item: Director's dialogue**

Director Pedersen updated the commission on current and anticipated issues at DEQ.

Director Pedersen and the commissioners discussed state and federal greenhouse gas reduction work, air quality concerns in Portland, the success of two recent high-volume days at Vehicle Inspection Program testing stations, the commission's role in agricultural field burning phase-down activities, asbestos at a housing subdivision in Klamath Falls, environmental cleanup activities at Alkali Lake, integrated water resource strategy planning, follow-up actions regarding an asphalt plant and odor issues in Newport, the status of stimulus funds at DEQ, and Pedersen's involvement with town hall events hosted by Attorney General John Kroger.

**L. Public Forum**

No members of the public submitted requests to speak at the forum.

*Item taken out of order*

**N. Informational Item: Upcoming legislative sessions and budget**

Greg Aldrich, government relations manager, discussed issues relating to the 2010 interim legislative session, 2011 regular session and the agency budget.

Aldrich explained that the legislative fiscal office requested a list of reduction options at a 10 percent cut level by November 13. Commissioner Uherbelau asked clarifying questions about the list, and Aldrich explained that the document is a starting point for the process in order to evaluate and prioritize reduction options. Aldrich explained that the reduction option list will be used during the special session, tentatively scheduled for February 2010. The legislature has not released details on the length of the session, but it is expected to last approximately four weeks. Aldrich noted that he will bring additional updates and information on the legislative session to the December commission meeting and keep the commission well-informed on the process and outcomes of the reduction options.

Aldrich explained that the budget development process for the 2011 legislative session starts in December and must be finalized in Feb. 2010. DEQ staff will evaluate what programs and work are affordable based on the approved budget, and will also create a new draft of reduction options across all funding types at a 10 percent cut level.

Director Pedersen added that budget development at DEQ is done in close partnership with stakeholders, and the transition to new representatives in 2011 will be eased by those relationships and conversations. Aldrich asked the commissioners to send feedback or requests for information in advance of the December 2009 commission meeting, and noted that he will present updates on the budget and legislative developments at each of the meetings in the winter and spring.

*Item taken out of order*

**R. Commissioner reports**

Vice chair Williamson discussed his role as the chair of a stormwater advisory committee at DEQ, and noted that committee staff will bring an information item to the commission in the late winter or spring 2010.

Commissioner Uherbelau asked for additional information on the actions of other states and agencies regarding pharmaceutical take-back programs. Director Pedersen stated that a sheriff's office in Clatsop County has agreed to operate a pilot program for prescription drug take-backs in Astoria, in partnership with the Association of Clean Water Agencies and based on the availability of program funding.

**Lunch break**

The commission recessed for lunch from approximately noon to 1 p.m. and held a government-to-government meeting with Larry Dunsmoor, tribal aquatic biologist for the Klamath Tribes.

During lunch, Deschutes County Commission Chair Tammy Baney presented public comment on the onsite program in Deschutes County. Her comments are not available on audio recording, but a copy of her comments is attached to this document.

**M. Action item: Mills contested case**

Larry Knudsen, EQC legal counsel, introduced the process and topic for the contested case. He also explained the commission's options for taking action on the matter and introduced Bryan Smith, DEQ environmental law specialist, Leah Koss, Office of Compliance and Enforcement manager, and S. Dennis Mills, the respondent in the contested case.

Mills, connecting by telephone conference call, presented his material in the contested case and stated that he believes DEQ is enforcing a double standard for requiring him to install an expensive septic filtration system or decommission the system when neighboring properties are allowed to install standard septic systems. Smith presented DEQ's material in the contested case and asked the commission to uphold Judge Webster's decision in the matter.

Mills and Smith then gave short rebuttals, as allowed under contested case procedure. Chair Blosser allowed Mills to add additional comment following Smith's rebuttal, and Mills clarified two points of information.

Chair Blosser closed testimony and asked the commission for any questions or discussion on the matter. Commissioners Dodson requested clarification on the fine for the violation, and asked if Mills could do a supplemental environmental project to reduce the total fine. Koss clarified that Mills can perform a supplemental environmental project, but would have to fund a project equal to the total fine so it does not reduce the amount he would be required to pay.

**Action:** Issue a final order to uphold Judge Webster's second amended proposed and final order.

**Move:** Commissioner O'Keeffe

**Second:** Vice chair Williamson

*Passed with four votes in support and one abstention.*

Support: Chair Blosser, Vice chair Williamson, Commissioners Dodson and O'Keeffe

Oppose: None

Abstain: Commissioner Uherbelau

*Item taken out of order*

**P. Informational and Discussion Item: EQC retreat and Strategic Directions update**

Joan Stevens-Schwenger, communications and outreach manager, and Greg Aldrich, government relations manager, presented the discussion on DEQ's strategic directions and proposed commission retreat. Stevens-Schwenger explained that the current strategic directions document expires in 2011, and that DEQ suggests a retreat during which commissioners can evaluate the agency's direction and update the agency's strategic directions in 2010. Aldrich noted that there are two approaches to updating the strategic directions, with small alterations possible now and a major reevaluation for the end of the six-year cycle in 2011. Director Pedersen explained that the proposed retreat is a great opportunity for the commission to evaluate DEQ's work and to translate that work into a

direction for the agency and address the needs of the state and concerns of the commission.

Vice chair Williamson noted that the commission needs to evaluate the paradigms within which DEQ operates, and find a way to balance the necessary daily tasks with a comprehensive approach to protect the environment and public health. Commissioner Dodson added that data and information are the drivers of DEQ's work, and that involving communities is imperative to make sure DEQ is operating collaboratively.

The commissioners discussed challenges and opportunities for the way DEQ operates, management in light of restricted funding sources, long-term approaches and direction for DEQ and best timing for the retreat. Director Pedersen stated that he values the commission's ability and role to set the direction for DEQ, and its part in setting the framework for a comprehensive approach to environmental work.

Chair Blosser and vice chair Williamson will form a subcommittee and work with DEQ staff to plan the proposed retreat. Stevens-Schwenger and Aldrich stated that they will take the information from today's meeting and work with staff and the commission to develop timelines and content for the retreat and bring updates to the December 2009 and February 2010 commission meetings.

*Note: Commissioner O'Keeffe left the meeting at 2:10 p.m.*

**O. Informational and Discussion item: Key performance measures report**

DEQ is required to submit an annual key performance measure report to the Legislature, and the EQC is responsible for one of the sixteen key measures. Greg Aldrich, government relations manager, introduced the item and opened the floor for discussion on the commission's performance measure. The commissioners agreed that training and collaboration with relevant agencies and organizations are two areas for improvement. The commissioners also discussed the general findings from their self-evaluation, stated some changes to wording, clarified some of the issues and gave steps for the evaluation processes.

*Note: Commissioner Uherbelau left the meeting at 2:35 p.m.*

**Q. Informational item: Annual performance evaluation for DEQ director – file 17**

Joan Stevens-Schwenger, communications and outreach manager, presented this item and explained that an annual review of the director is part of the commission's measures and best practices. Stevens-Schwenger explained the process and intent for the review, and asked the commissioners for their feedback or suggestions on the content and timeline of the review. Commissioners Dodson and O'Keeffe may form a subcommittee to lead the evaluation.

**Chair Blosser adjourned the meeting at approximately 3:30 p.m. on Friday, Oct. 23, 2009.**