

**Minutes of the Three Hundred and Fifty-first Oregon Environmental  
Quality Commission Meeting  
August 20-21, 2009**

**Best Western Agate Beach Inn  
Newport, OR**

**Thursday, August 20**

Chair Blosser convened the meeting at 9:02 a.m.

**A. Preliminary Commission Business: Adoption of minutes of the June 18-19,  
2009 regular meeting and July 10, 2009 special meeting**

The Environmental Quality Commission reviewed the draft minutes of the June 18-19, 2009, regular EQC meeting and July 10, 2009, special EQC meeting.

**Action** – Adopt both sets of minutes as presented

**Move:** Commissioner O’Keffe

**Second:** Commissioner Dodson

*Passed unanimously*

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

*Joni Hammond and Rich Duval, Department of Environmental Quality*

Mr. Duval updated the commission on the mustard agent ton container trial burn at the Umatilla facility. He explained that the facility burned the first mercury-containing ton container on June 30, 2009, and the detection system reported mercury emissions. The facility shut down for seven days to investigate the incident, and found that the bypass valve around the carbon filter had a small gap that allowed some emissions to escape. The gap was fixed and the facility burned 20 more mercury-containing containers without any mercury emissions detected.

Mr. Duval gave an update on lawsuits related to incineration of chemical weapons, though not at the Umatilla facility, noting that a federal judge dismissed a 2003 suit and ruled incineration a safe disposal strategy for regulatory use and the public. Mr Duval also gave an update on the status of the Title V air quality permit application from the facility, noting that the permit is in the first of two public comment periods, and DEQ might grant the permit in fall 2009 if no significant issues or comments emerge and all permit conditions are met.

Commissioner Dodson asked about the schedule for the end of the demilitarization campaign, especially as it relates to the jobs that will be displaced when the facility closes. Mr. Duval explained that the Army has offered six months of post-closure retraining for facility staff, and the land re-use authority is still investigating re-use options for the facility.

**C. Informational Item: Director's Dialogue**

*Dick Pedersen, Department of Environmental Quality director*

Director Pedersen welcomed the commission to Newport, and noted that the meeting is a great opportunity to hear resident and staff feedback on local issues for the mid-coast region.

Director Pedersen explained the updates provided in the Director's Dialogue staff report, and answered clarifying questions from the commission. The commission discussed the new advisory committee structure and process, as proposed by Director Pedersen. Vice Chair Williamson noted that Oregon State University has a good model for teleconference facilities and he would like to connect with DEQ to allow broader geographic representation on committees using technology.

Director Pedersen invited the commission members to a toxics workshop hosted by DEQ on Nov. 17, 2009, at the Portland headquarters and encouraged them to widely distribute the information to all interested parties. He also stated that DEQ's lab staff will bring the Willamette Basin water quality assessment report for feedback at the October 2009 meeting.

Toxics workshop page: <http://www.deq.state.or.us/wq/SB737/toxicworkshop.htm>

**D. Action Item: Morsman waiver contested case**

*Leah Koss, Department of Environmental Quality*

Commission counsel Larry Knudsen polled the commission for ex parte contacts and conflicts of interest, and commissioners reported none. He gave a brief overview of the background of the case and clarified two procedural issues. He noted that DEQ believes that the new materials submitted by Mr. Sheehan on behalf of the Morsmans during the briefing process are not allowed under administrative hearing and EQC rules and procedures. He explained that the options for EQC action are slightly different than the ones presented in the staff report, and submitted the three revised options in the form of a new paper handout that the commission assistant distributed to all parties and entered into the official meeting record.

Mr. Sheehan presented the Morsmans' argument in the contested case and clarified that the new materials he submitted were in direct response to questions asked by the commission at the June 2009 contested case hearing related to the Morsmans' requirement to connect to the city sewer system. He stated that the Morsmans have always intended to apply for a temporary waiver of the requirement and that the language of the waiver request may not have indicated this intent.

Leah Koss presented DEQ's argument for the contested case. She noted that Mr. Sheehan's submission of new evidence is not proper according to the Oregon Administrative Rules and process to submit new material, but Mr. Sheehan did not follow

those provisions. She also explained that Director Pedersen based his decision on EQC policies and DEQ's obligation to protect water. Ms. Koss stated that Judge Gutman ruled that Director Pedersen did not abuse his discretion in denying the Morsmans' request for a waiver, and asked the EQC to uphold Judge Gutman's proposed order.

Mr. Sheehan and Ms. Koss, respectively, offered their rebuttal arguments and Chair Blosser closed all testimony before inviting the commission to ask questions for Mr. Sheehan and Ms. Koss. The commissioners asked clarifying questions about the process and allowable options under the contested case process.

**Action** – Affirm Judge Gutman's decision, as presented in the DEQ staff report.

**Move:** Vice Chair Williamson

**Second:** Commissioner Dodson

**Discussion:** Commissioner Uherbelau commented on the process of contested cases and voiced her opposition to the EQC hearing these appeals without legal expertise. She specifically noted that she intends to vote no on all contested case hearings.

**Yes – 4:** Chair Blosser, Vice Chair Williamson, Commissioner Dodson and Commissioner O'Keeffe

**Opposed – 1:** Commissioner Uherbelau

**Abstain – 0**

*Passed with four commissioners in support and one in opposition.*

#### **E. Action Item: Title V air permitting fees temporary rulemaking**

*Andy Ginsburg and Andrea Curtis, Department of Environmental Quality*

Andy Ginsburg introduced the proposed temporary rule and Andrea Curtis explained the proposal in detail. She noted that the proposed temporary rulemaking incorporates a legislatively approved correction of the dates used to assess the consumer price index increases, and aligns the program with EPA requirements. She also explained that DEQ is proposing a temporary rule now in order to issue one invoice for 2009, rather than waiting for a permanent rulemaking and having to issue two separate invoices for permitted sources and require extra work of the sources and DEQ staff.

Ms. Curtis discussed a letter, submitted to all parties and entered into the official meeting record, from Blue Heron Paper Company. The letter expressed concern for doing temporary rule without a formal public comment period and several other technical and specific issues related to rate increases and payments. Ms. Curtis explained that DEQ does prefer permanent rules but doing this temporary rule is efficient and allows for simplified invoicing. She stated that DEQ intends to propose permanent rulemaking in 2010, and will have a full public comment period.

The commission asked clarifying questions about the rate increases and Mr. Ginsburg and Ms. Curtis addressed the technical and specific questions on rates and payments as required by rule.

**Action** – Approve the temporary rules by adopting the staff recommendation as presented in the staff report.

**Move:** Commission O’Keeffe

**Second:** Vice Chair Williamson

*Passed unanimously.*

[Item taken out of order]

**G. Action Item: Issuance of DEQ pollution control bonds**

*Greg Aldrich, Department of Environmental Quality*

Greg Aldrich presented information on the proposed rules and explained how DEQ uses bonds. He noted that these bond funds would allow DEQ to access money from the Clean Water Act State Revolving Fund. He explained the request and the information used to determine the bonds needed for DEQ. Mr. Aldrich explained that this bond request affects only the normal, annual Clean Water Act State Revolving Fund capitalization grants that are bond-matched by rule, and not the \$45 million federal stimulus grants.

**Action** – Adopt the staff recommendation, as presented in the staff report.

**Move:** Commissioner Dodson

**Second:** Vice Chair Williamson

*Passed unanimously*

[Item taken out of order]

**F. Informational Item: Update on DEQ budget and Legislative session**

*Greg Aldrich, Department of Environmental Quality*

Greg Aldrich submitted talking points for the item, which the commission assistant distributed to all parties and entered into the official meeting record. He explained the item’s agenda and process and gave an update on the 2009 Legislative session’s outcomes. He explained legislation that related to DEQ’s air, land and water programs and the ways that bills would affect DEQ’s regulatory authority, rulemakings and general processes necessary to fulfill the legislative intent.

Vice Chair Williamson noted that a new iPhone application, developed by a professor at UC Berkeley, allows a consumer to read barcodes with the phone and immediately download information on toxics in the product. He noted that it would be a great collaboration for DEQ to get the Senate Bill 737 toxics into this application and would like to see information on this idea when it is available.

Commissioner Uherbelau noted that DEQ should do more outreach regarding consumer awareness of polluting and illegal products, especially related to phosphate-containing detergents. Mr. Aldrich responded that DEQ is working with distributors and stores to make sure these products are not on the store shelves in Oregon, rather than requiring consumers to know what products to avoid.

**Lunch and Executive Session**

The EQC met in executive session over lunch from approximately 12:30 to 2 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).

**Item F – continued from before lunch**

*Greg Aldrich, Department of Environmental Quality*

Greg Aldrich explained the DEQ budget and answered specific questions related to the legislatively approved budget for DEQ over the next biennium. Commissioner Dodson noted that the reductions in agency management-related money could make it difficult for DEQ to accomplish the large amount of work required during the next biennium.

Mr. Aldrich discussed the operating budget and the commission asked specific questions on funding structures and the allocation of certain fees when received by DEQ. He also discussed available staffing levels under the legislatively approved budget. Director Pedersen noted that DEQ is developing an operating budget much earlier than ever before as a best management of limited resources, and all staff members are working to keep spending as close to the revenue line as possible.

Mr. Aldrich explained the budget fact sheet, budget omnibus bill and funding implications for DEQ over the next two years. He noted that the Legislature will hold a special session in 2010 and each senator can have two bills and two per committee, each house member can have one bill but none from state agencies or the governor. DEQ does not anticipate any direct-impact bills, and will know more in the next few months.

Mr. Aldrich explained that DEQ staff members are preparing for the 2010 special session and the 2011 regular session, and expect to participate in interim legislative committees as asked and appropriate. Director Pedersen noted that he will be visiting DEQ offices across Oregon and invited the commission to meet with him and environmental committee, or other interested, legislators in the regions.

**H. Action Item: Compost rulemaking**

*Wendy Wiles and Charlie Landman, Department of Environmental Quality*

Wendy Wiles gave background on the rulemaking and noted her compliments to Charlie Landman for his leadership on a difficult rulemaking that has been in process for many years and faced a major stakeholder impasse in 2008. She explained the stakeholder and outreach process and noted that proposed rules would have good environmental outcomes that will be accepted by the stakeholders.

Charlie Landman discussed the risk assessment for compost facilities, and the process for directing low-risk sources to a registration and simpler process, and high-risk sources to a permitting and closer management and inspection process. Both kinds of sources have a 10-year permit, with annual compliance fees and an approved management plan required for high-risk sources.

The commission asked questions about the requirements and management practices for the composting operations under the proposed rules and DEQ's ability to screen the facilities and best management strategies. Mr. Landman explained that the Onsite Program has a good existing model for screening, and the majority of the facilities will require a simple inspection and not an extremely in-depth screening process that would be labor intensive for DEQ staff.

Commissioner O'Keefe stated that she is from eastern Oregon and appreciates and supports the environmental risk-based assessment for permits rather than assessments based on facility size.

Mr. Landman noted that DEQ should reframe the image of compost from solid waste to a beneficial and valuable product and process.

Mr. Landman presented one clarification, noting that the actual proposed rules are in attachments A2 through A5 and the staff report recommendation should read "in attachments A2 to A5."

**Action** – Adopt the DEQ recommendation in the staff report with the clarification noted above

**Move:** Vice Chair Williamson

**Second:** Commissioner O'Keefe

*Passed unanimously*

Director Pedersen noted that this rulemaking is a major landmark event, and echoed Ms. Wiles' acknowledgement of Mr. Landman and recognized Ms. Wiles for her work and a very important rulemaking.

Commissioner Dodson also noted that she supported the environmental risk-based assessment as a positive element of this rule.

## **I. Discussion Item: DEQ climate change symposium**

*Andy Ginsburg and Wendy Wiles, Department of Environmental Quality*

Andy Ginsburg and Wendy Wiles presented the discussion item, and asked the commissioners for feedback on a proposed climate change symposium in late fall 2009 or early winter 2010. The commissioners asked questions related to the scope and intent of the symposium, and suggested that DEQ present the material in a series of informational items at regularly planned commission meetings rather than a one-day symposium. The commissioners stated that they would like sessions to establish baseline scientific knowledge on climate change, to help them make informed policy decisions.

Mr. Ginsburg summarized that DEQ will present four or five informational items starting in winter 2010. The sessions will cover baseline scientific information, a discussion of state and federal policies related to climate change, scientific and policy adaptations that may be required by climate change, visions for the future, and some next steps and how they

relate to the commission's role and scope. Mr. Ginsburg added that that California has a very forward-thinking climate change bill and many action items, and it would be a good opportunity to hear their work and the direction for Oregon's policy and regulatory authorities. Commissioner Dodson noted that DEQ presenters should develop messages to share with the public as partners in policy.

Chair Blosser recessed the meeting until the 7 p.m. town hall.

#### **J. Town hall meeting on local environmental issues**

The commission hosted a town hall-style meeting from 7 to 9 p.m. with residents, stakeholders, local officials and other interested persons to address issues of local concern.

Chair Blosser recessed the meeting until Friday, Aug. 21, 2009.

#### **Friday, June 19 — Commissioners' tour began at 9 a.m.**

##### **K. Tour**

Keith Andersen, Western Region acting Administrator, led the commission on a tour of projects and sites of interest in the Newport area. The group visited Nye Beach, an asphalt manufacturing plant and the Hatfield Marine Science Center. The group viewed the GP Toledo plant's wastewater outfall at Nye Beach, the work at the Hatfield Marine Science Center, the International Port of Newport and the planned NOAA facility in Yaquina Bay. The stop near an asphalt plant was the result of comments at Thursday evening's town hall-style session from residents concerned about air toxics from the manufacturing process and the plant's proximity to two schools and a residential area. Several DEQ staff members, including Director Pedersen, also went on the tour.

Chair Blosser reconvened the regular meeting at 11:39 a.m.

##### **L. Public Forum**

1. Diana Purdy submitted a letter for the official meeting record from Bill Hall, Lincoln County Board of Commissioners. She read the letter for the official audio record.
2. Tom Kerns submitted a letter for the official meeting record and commented on human rights and the environment, especially air quality and the coastal region. Mr. Kerns focused on the air quality degradation caused by paper mills and asphalt plants, and issues associated with runoff from forestry management practices. Mr. Kerns asked DEQ to establish an air quality monitor on the coast at Newport so that specific air quality and air toxics data exists for Newport.
3. Maxine Centala read from a prepared statement, later entered into the official meeting record. Ms. Centala stated that DEQ must establish an air monitoring station in the area and that modeling is not sufficient. She stated that the GP Toledo plant is the major reason to do this monitoring, and requested that DEQ establish a rule to cover materials used in industrial boilers, test the air in Toledo and reduce or eliminate plastics from allowed burn piles. She stated that DEQ appears to favor industry over people, though

that seems less prevalent a response now than in the past and that the EQC can implement stricter air quality rules and policies than federal regulations.

4. Milo Mecham identified himself as the attorney for the city of Coburg and commented on the proposed permanent rule adoption for the Clean Water State Revolving Fund and the proposed temporary rule. He stated his intent to submit his comments in writing for the permanent rulemaking before the close of the comment period. Mr. Mecham stated that DEQ's permanent rule is much more conservative than the federal intent for rule, and frustrates the actions of Congress to fund projects to stimulate the economy. Mr. Mecham stated that DEQ's proposed permanent rule limits the scope of recovery act funding, and makes some projects ineligible when they would be immediately able to start work, particularly limiting the opportunities of cities like Coburg to gain access to the funds. He also stated that the temporary rule carries the same restrictions as the permanent rule and eliminates Coburg and other small cities from the funding when they are able to begin work immediately.

5. Charlie Plybon, of the Surfrider Foundation, submitted a handout that the commission assistant distributed to the commission and entered into the official meeting record. Mr. Plybon explained that the outfall at the GP Toledo plant is a major focus of the group's work. Mr. Plybon discussed the outfall location, impacts to recreational activities and associated tourism concerns. Mr. Plybon asked DEQ to establish an ongoing monitoring program in Newport and stated that his organization will be involved through the upcoming permit renewal process for GP Toledo.

6. A letter from the city of Gresham regarding the proposed temporary rule for the Clean Water State Revolving Fund. The commission assistant distributed the letter to commission and entered a copy into the official meeting record.

7. A letter from the Association of Clean Water Agencies regarding the proposed temporary rule for the Clean Water State Revolving Fund. The commission assistant distributed the letter to commission and entered a copy into the official meeting record.

#### **Lunch Break**

The commission recessed for lunch from approximately 12:15 to 1:45 p.m. and held a government-to-government meeting with representatives from the Confederated Tribes of Siletz.

#### **Additional public comment regarding the city of Coburg petition**

Chair Blosser invited Terrance O'Connor, city manager for the city of Coquille to share a brief public comment related to the city of Coburg petition. Mr. O'Conner stated that the DEQ staff members erred in determinations for stimulus funding that excluded Coquille, and possibly other communities, and officially stated his support for the Coburg petition and proposed amendments. He urged the commission to adopt Coburg's proposed amendments to the State Revolving Fund rules.

*[\* The audio for this item is at the start of Item M.]*

**M. Informational Item: Collaborative water quality planning**

*Phil Ward, Water Resources Department*

Phil Ward, director of the Water Resources Department, presented background information on a new legislative direction for DEQ and the Water Resources Department to work with other state agencies on a comprehensive and integrated water quality planning strategy for Oregon. Director Pedersen noted that this could be a regular update to the commission as the planning proceeds.

Mr. Ward explained that Oregon lacked a clearly articulated plan for long-term water resources and water supply needs five years ago, and the Water Resources Department started a process to develop that strategy and a plan to integrate quantity issues with quality issues. Those actions led to legislation in 2009 that directed the Water Resource Commission to create and adopt a long-term and integrated strategy for water resources that included water quantity, quality, and fish and wildlife needs through a partnership with DEQ/EQC and Oregon Department of Fish and Wildlife over the next two years. Mr. Ward noted that the Water Resource Commission has been very involved in this process and Christine Svetkovich from DEQ helped to draft the first issue paper on water quality.

Director Pedersen stated that he is attending a Water Resources Commission meeting in September and would like to have a joint commission meeting at some point in the future. Vice Chair Williamson stated that he would like more economic analysis in the issue papers and reports to create a cohesive story for the Legislature on the true value of water resources.

Mr. Ward answered several clarifying and detailed questions about the presumed approach and strategies for the planning process and what outcomes he expects. All commissioners stated their support for this project and interest in the planning and strategy information as it is available.

**N. Action Item: Coburg Petition**

*Neil Mullane and Judy Johndohl, Department of Environmental Quality*

The city of Coburg submitted a petition to amend the rules for the Clean Water State Revolving Fund Loan Program to allow approval for their wastewater treatment project. Judy Johndohl summarized the rules, adopted in April 2009, and the content of the petition and proposed amendments. Ms. Johndohl explained DEQ's position in response to the petition and its proposed amendments and requested that the EQC deny the petition's request.

Chair Blosser invited Milo Mecham, city attorney for Coburg, to address the commission. Mr. Mecham presented the city's position and petition request. He stated that the city of Coburg requests that the commission accept the petition and adopt the two amendments for the proposed permanent Clean Water State Revolving Fund rules.

The commission discussed timelines, risk and benefit for amendments now or later, and the possibility of adopting the proposed amendments.

**Action** – Adopt the DEQ recommendation as presented in the staff report

**Move:** Vice Chair Williamson

**Second:** Commissioner Dodson

**Discussion:** Chair Blosser stated that the city of Coburg is asking for a significant amount of funding through this petition, and it is dangerous for EQC to grant the request. Vice Chair Williamson noted that the DEQ staff members came up with rules that they thought were the intent of the stimulus money, and this issue is obviously a difference of opinion on the intent and associated rules. He stated he did not want to jeopardize DEQ’s ability to disperse the Clean Water State Revolving Fund money by granting the petition and requiring additional time to reprioritize projects. Commissioner Uherbelau noted that she supports the motion, but does not necessarily agree with staff report where it says that Coburg is not eligible for act funding.

*Passed unanimously*

**O. Action Item: Tax credits**

*Maggie Vandehey, Department of Environmental Quality*

Maggie Vandehey presented the information on 17 applications for final certification and four certificate transfers under the pollution control tax credit provisions.

**Action** – Accept the recommendation to approve the items in attachments B and C, as presented in the staff report.

**Move:** Commissioner O’Keeffe

**Second:** Commissioner Dodson

*Passed unanimously*

**P. Action Item: State Revolving Fund temporary rulemaking**

*Neil Mullane and Judy Johndohl, Department of Environmental Quality*

Neil Mullane and Judy Johndohl submitted a handout with a copy of their presentation slides, and the materials were entered into the official meeting record. Director Pedersen clarified that this set of proposed temporary rules applied to normal Clean Water State Revolving Fund money, and not the \$45 million in stimulus funding program.

Neil Mullane explained that the proposed temporary rule would establish a special fund of loan money that would allocate 50 percent of the funds from the 2009 fiscal year loans repayments to new projects and 50 percent to increasing loans for projects already in-progress under the program.

He noted that this special reserve would allow DEQ to direct about \$24 million to new projects at zero percent interest and with a \$5 million maximum for any one project. The

other \$24 million would go to the standard increases in loans for projects that have had Clean Water State Revolving Fund loans in the past.

The commission discussed the proposed temporary rules and asked clarifying questions on the financial impacts, program funds comparison and next steps. Mr. Mullane noted that the Water Quality Division plans to start a full program review of the Clean Water State Revolving Fund with Judy Johndohl as the lead on that project and engage in permanent, instead of successive temporary, rulemaking.

Director Pedersen thanked Mr. Mullane and Ms. Johndohl, and the rest of the program's staff, for their creative and new approach to getting this loan money to new projects and communities. He redirected the commissioners to the comment letters from the city of Gresham and the Association of Clean Water Agencies submitted as part of public forum and in support of this temporary rulemaking.

**Action** – Adopt the staff recommendation, as presented in the staff report.

**Move:** Commissioner Uherbelau

**Second:** Vice Chair Williamson

*Passed unanimously*

Vice Chair Williamson asked DEQ staff members to review the zero percent interest provision in the rules, as it may give an impression to communities that the loan has less value than one with a small interest rate. Commissioner Uherbelau expressed a contrary view on this issue, noting that the communities are borrowing the money to meet state requirements for the Clean Water Act so it makes sense to offer loans at zero percent for this certain and limited use.

### **Commissioner Reports**

Commissioners presented information and updates not covered in the regular meeting agenda.

**Vice Chair Williamson** – The Oregon Watershed Enhancement Board was created through an initiative process and is planned to expire in 2014. The group is discussing best ways to manage that change and some environmental groups are planning an initiative ballot for 2010 that would create a state agency similar to OWEB but with a different scope. DEQ gets about \$3 million a year from OWEB to fund a number of programs, including the total maximum daily load program. DEQ needs to be involved in this process as appropriate and coordinate with the other state agencies that OWEB funds.

**Commissioner Uherbelau** – Suggestion: hold the October EQC meeting in Klamath Falls, or other location closer to the southern part of Oregon. Director Pedersen responded to Commissioner Uherbelau's suggestion, noting that it may be an opportunity to be in southeastern Oregon for the October meeting and he will work with staff to finalize this information soon.

Chair Blosser adjourned the meeting at approximately 3:20 p.m.