

**Minutes of the three hundred and fifty-third
Oregon Environmental Quality Commission meeting
December 10-11, 2009**

**DEQ headquarters
811 SW 6th Avenue, room EQC-A
Portland, Oregon**

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 8:35 a.m. on Thursday, Dec. 10, 2009.

**A. Preliminary commission business: Adoption of minutes of the Oct. 22-23, 2009
regular meeting**

The commission reviewed the minutes from the Oct. 22-23, 2009, regular EQC meeting,
and approved them as presented.

Action: Approve the draft minutes.

Move: Vice-chair Williamson

Second: Commissioner Dodson

Passed unanimously

This item was taken out of order

**C. Informational item: Best available technology for the treatment of spent carbon
at the Umatilla Chemical Agent Disposal Facility and facility status update**

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. Hammond and Duval gave an update on the
outcome and conclusion of the GASP lawsuit and trial, and recent enforcement actions
DEQ took against the facility. Duval showed a video of a ton container burning process,
including a boil-over of the ton container in the furnace. The commission discussed
several other recent events and reports related to the facility.

Duval and MJ Davis, natural resource specialist in the chemical demilitarization program,
presented an informational item on the best available technology for the mustard agent
burn at the facility. Davis explained that the item is an informational briefing, and the
next several weeks are an open public comment period with an action item for the
commission in February.

Davis discussed some background on the issue, and reasons for reconsideration of the
determination. The commission asked questions about the determination and other
methodology considerations for the issue. Davis discussed the five technologies
identified for the treatment of agent-contaminated carbon, and the commission asked
clarifying and informational questions about the options. Davis discussed the options for
determination of best available technologies for the treatment for mercury-contaminated

spent carbon. Davis noted that DEQ does not project any of the spent carbon to have higher-than-expected levels of mercury contamination, so it will be treated as standard hazardous waste under DEQ rules and practices.

This item was taken out of order

B. Action item: Tax credits transfer approval

Maggie Vandehey, DEQ tax credit coordinator, requested that the commission transfer an existing certificate to a new owner, noting that the provisions of the original certificate apply with the remaining credit to 2017. Commissioner Uherbelau asked clarifying and informational questions about the transfer process and provisions associated with the pollution control credits.

Action: Approve the transfer of pollution control facility certificate number 11561, shown in attachment A, from the Carlton Company to Blount, Inc.

Move: Commissioner O’Keeffe

Second: Commissioner Dodson

Passed unanimously

D. Informational item: Oregon’s Middle Columbia Steelhead Recovery Plan

Suzanne Knapp, natural resource policy advisor to Governor Kulongoski, presented an update on Oregon’s middle Columbia steelhead recovery plan, noting that the plan is finalized after several years of development and is being presented to a number of state agencies and partner organizations as it receives final approval from necessary organizations.

Knapp explained the elements of the plan, the background of steelhead in Oregon, specifics of the necessity of the recovery plan for the fish and the goals for the plan. Knapp discussed the ways that DEQ will be involved with the plan, even though the recovery plan is not specifically regulatory but does rely on partnership with regulatory agencies to ensure compliance with existing regulations through plan actions. Knapp discussed eight strategies to improve tributary habitat, DEQ programs that are related to improvement of degraded water quality, DEQ management actions identified in the recovery plan as possible and recommended actions to improve water quality and conditions, research and monitoring actions in the recovery plan. Knapp also explained the implementation framework for the plan, the relationship to the Oregon Plan for Salmon and Watersheds and other programs and processes that will help reach the delisting and recovery plans for steelhead.

Knapp discussed the challenges and complications for the plan, and the commission asked questions related to the plan, funding sources and partnership frameworks. The commission asked specifically about the issue of dam removal and if there are plans to remove dams and what, if any, public response there has been to those considerations. Chair Blosser noted that the human health water quality criteria rulemaking, and associated nonpoint source element of that rulemaking, will be strongly related to much of the work DEQ does on this and other recovery plans.

Director Pedersen commended Knapp's work on this and other issues, and her history of work for Oregon.

E. Action item: Update on the memorandum of understanding between EQC and the Oregon Department of Agriculture for confined animal feeding operations

Neil Mullane, water quality division administrator, introduced the presenters Ray Jaindl and Wym Matthews, from the Oregon Department of Agriculture, and Beth Moore, DEQ's surface water general permit manager. Director Pedersen welcomed Katy Coba, director of ODA, to the commission meeting.

Jaindl discussed ODA's work related to confined animal feeding operations, and gave background about the DEQ and ODA partnership for water quality plans and the limitations for water quality plans in relation to agricultural frameworks. Matthews, manager of ODA's CAFO program, discussed the specifics of the permit program. The commission discussed compliance and enforcement considerations with ODA's water quality program.

Moore presented background on the CAFO permit program at DEQ and the memorandum of understanding between DEQ and ODA. Moore noted that the proposed memorandum is similar to past versions of the document, with some minor updates to public notice and electronic reporting data requirements for ODA and DEQ along with small clarifying changes related to textual corrections and minor edits. Moore outlined the roles and responsibilities of DEQ and ODA contained in the memorandum of understanding, and noted that the current document expires February 28, 2010. The proposed agreement would be in effect through December 31, 2014 if approved.

Action: Approve a new memorandum of understanding between DEQ and the Oregon Department of Agriculture, as presented in attachment A of this agenda item.

Move: Commissioner Uherbelau

Second: Commissioner O'Keeffe

Passed unanimously

F. Informational and discussion item: Annual rulemaking agenda

Director Pedersen introduced the item with an overview of the rulemaking process. Maggie Vandehey, agency rules coordinator, gave a brief introduction and explained the commission member involvement matrix.

Andy Ginsburg, air quality division administrator; Wendy Wiles, land quality division administrator; Neil Mullane, water quality division administrator; Leah Koss, interim manager for the Office of Compliance and Enforcement; and Maggie Vandehey, acting as agency tax credits program manager, described the rulemakings listed on the matrix for the respective divisions and programs. The commissioners discussed the items and their choices for levels of involvement desired for 2010 rulemakings. The commission stressed the importance of keeping them actively involved if they requested involvement on individual rulemakings.

Lunch and executive session

The commission met in executive session from approximately 12:15 to 1:15 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). The public meeting reconvened at 1:15 p.m.

This item was taken out of order

H. Action item: Restoration of the Onsite Program

Joni Hammond, deputy director, introduced the item for Neil Mullane, water quality division administrator, who could not attend. Mike Kucinski, onsite program manager, provided an overview of the program and the proposed fee increase. Kucinski explained the reasons for the proposed fee increase, and described the program activities that DEQ has reduced or eliminated due to current fees and declining revenue. Kucinski explained that the program is working with an advisory committee to develop a long-term funding strategy but that strategy and advisory committee recommendations are not yet available. DEQ may develop legislative concepts for the 2011 session, funding mechanisms and fee structures based on the recommendations from the advisory committee.

Randy Trox, onsite program specialist in DEQ’s western region, discussed the history of the onsite program and the lack of fee increases in the past decade. Trox explained that the program has had infrequent but significant fee increases, and that the advisory committee has recommended a review of the nature and structure of the fee increases for the program. Trox clarified that fee increases must be approved by the legislature, the process of which may contribute to the function of the infrequent and dramatic fee increases. Kucinski clarified that the lack of fee increases in the past 10 years correlated to a large number of applications and increased efficiencies related to the application process, whereas the applications have slowed and the prior efficiencies are no longer applicable for the program. Trox summarized the proposed fee increases for the commission’s consideration.

The commissioners asked clarifying and technical questions related to program operations, fee structures, staffing levels, technological advances and efficiencies. The commissioners also noted that many of the comments expressed concern for the fee increase specifically in eastern Oregon and the likelihood of illegally installed systems increasing due to the fee increase. Trox explained that the program does want to have some element of financial assistance for individuals who absolutely cannot afford systems or whose systems are actively failing.

Action: Adopt rule amendments to Oregon Administrative Rules 340-071-0140(2), (3), (5) and (6) to increase the onsite program’s fees, as presented in attachment A2 of this agenda item.

Move: Commissioner O’Keeffe

Second: Vice chair Williamson

Passed with four votes in support, none in opposition and no abstentions. Commissioner Dodson was not present for the vote.

G. Action item: Streamlining water quality permit adoptions

Neil Mullane, water quality division administrator, and Beth Moore, surface water program general permit coordinator, gave an overview of the proposed changes and rulemaking. Moore explained the public comment process, DEQ responses to the comments and the proposed changes to the rules. The commission asked for clarification on one change in the proposed rule, which Moore and Larry Knudsen, general counsel for the commission, provided.

Action: Adopt revisions to OAR 349-045-0033(1), (5), (6) and (11), as presented in attachment A of this agenda item, to clarify the process of replacing a permit adopted by rule with a general permit adopted by department order.

Move: Vice chair Williamson

Second: Commissioner Dodson

Passed unanimously

This item was removed from the agenda prior to the meeting

I. Informational item: DEQ's sustainability plan

This item was removed from the agenda prior to the meeting

J. Action item: Niemi contested case

This item was taken out of order

L. Informational item: Water delivery systems study

Director Pedersen introduced the item by noting that Abby Boudouris, project manager for this work, was unable to attend the meeting due to a scheduling conflict. He explained that Boudouris was representing DEQ at a national stakeholder meeting in Portland for the innovative paint product stewardship program, in which DEQ will play a significant role.

Loretta Pickerell, solid waste policy and program development manager, gave background information on the study and its relationship to solid waste work at DEQ. Pickerell noted that the project allowed DEQ to cross-train Boudouris and Jordan Palmeri in life cycle analysis through this commissioned study.

David Allaway, waste prevention impact analyst, discussed issues of waste prevention and DEQ's solid waste prevention program. Allaway explained DEQ's waste prevention strategy, identified for 2008 through 2017. He discussed waste prevention benefits related to emissions, waste and systems affected by prevention rather than recycling or disposal. Allaway discussed the reasons for why DEQ commissioned the study, and noted that existing waste studies are not specific to North America, and may not be comprehensive. He explained that DEQ commissioned this study to examine the waste prevention hierarchy and product specifications that may have long-reaching effects for delivery of water to consumers.

Allaway described the study's process, and the scope of the life cycle analysis and study. He noted that the most people are interested in the major conclusions of the study related to single-use plastic bottles and tap water. Allaway discussed major findings and results

from the study, and the commissioners asked clarifying questions about results and data. Allaway explained that the results are being used at the local and national level, and added that DEQ commissioned a similar study four years ago on e-commerce packaging, which has resulted in changes to commerce activities. Allaway noted that these kinds of studies present a significant opportunity for DEQ to engage with stakeholders on many levels.

The commission asked about the large-scope outcomes, and what DEQ hoped to do with that information. Director Pedersen stated that the study's results allow policy makers to ask larger questions to drive policy and legislative decisions. Commissioner Uherbelau noted that it is very important to get the materials statewide and that the consumers need to hear this information directly and not through legislative discussion. Pickerell noted that DEQ commissioned this study to get quality data that could stimulate interest from partners and the public, and that is the significant and major value for this work.

This item was taken out of order

M. Informational item: Director's dialogue

Director Pedersen updated the commission on a number of projects, issues and topics related to Oregon's environment. The updates included sustainability at DEQ, nitrate concerns in the Lower Umatilla Basin, municipal wastewater permit issues in Portland, recent enforcement actions, DEQ's toxics prevention and reduction strategy, water quality rulemakings and projects, successes in the Oregon E-Cycles program, Willamette Valley field burning rule revisions, federal and local climate change projects and his recent visits to DEQ offices around the state. Director Pedersen asked the commission for concurrence with two new appointments to the Air Toxics Science Advisory Committee, which the commission approved unanimously.

This item was taken out of order

N. Informational item: Upcoming legislative sessions and budget update

Greg Aldrich, government relations manager, discussed the special legislative session in 2010 and the 10 percent reduction options as requested by the Legislative Fiscal Office. Jim Roys, budget manager, discussed the effects of any tax repeals and status and projected outlooks for state and DEQ budgets related to the special session.

Aldrich discussed details for the special session, noting that the Legislature could consider up to 300 bills during the month-long session starting February 1, and there appears to be only one bill that relates significantly to DEQ's work. A technical change to characterization of electronic waste would have implications for the Oregon E-cycles program at DEQ. Aldrich explained the process and timeline for the special session, and answered several clarifying and informational questions from the commission.

Aldrich discussed the timelines for preparation for the 2011-13 session and DEQ's legislative agenda. Roys added that many fee-funded programs have experienced significant revenue reductions based on changes in levels of work coming in to the programs. Commissioner Uherbelau noted that Oregon will likely be in difficult budget situations for a very long time, and Roys added that some budget analysts have noted 2011-13 may be

worse due a loss of stimulus funding to backfill some current work and programs. Director Pedersen reminded the commission that the next full session will see a change in the executive branch which may have an impact on legislative and budget considerations for the 2011 session.

Aldrich outlined key dates for the development of budget packages and legislative concepts, many of which will be related to toxics prevention and reduction, water quality concerns and climate change projects. Aldrich explained that policy options packages and legislative concepts will address areas of high need during the 2011 session, and address some gaps in fee authority for current projects and programs. Commissioner Uherbelau requested a program for pharmaceuticals that is similar to the E-Cycles product stewardship by manufacturers, noting that DEQ may not be able to progress this kind of legislation during the 2011 session. Aldrich noted that DEQ is connected to work on that issue with the Oregon Association of Clean Water Agencies and their partners, and that it remains a priority for them and other interest groups. Vice-chair Williamson added that there was a very successful collection program for pharmaceutical product return in Gresham, and repeats of that kind of event will help drive interest in product stewardship for pharmaceuticals.

Aldrich stated his intent to bring an information item on budget and legislative concerns at each commission meeting in 2010, and will present the annual fiscal report for the commission's review in February. Chair Blosser requested that during the February session, DEQ send a weekly email with legislative and budget updates to the commission, and keep the commissioners informed on relevant issues.

This item was taken out of order

P. Action item: NESHAP rulemaking, phase two

Andy Ginsburg, air quality division administrator, introduced the item and asked Jerry Ebersole, air toxics specialist, to present the item. Ebersole, connected by conference phone, gave definition and background information before discussing the proposed rules. Commissioner Uherbelau asked clarifying questions related to registration as an alternative to permitting, permitting for dry cleaners, and how those issues and processes were different. Ginsburg clarified the issue, noting that those options are only available to operating sources that exceed compliance standards.

Ginsburg summarized the proposed rule amendments, noting that the proposal effectively adopts phase two of the federal NESHAP requirements and eases the permitting requirements on some small and above-compliance sources based on the recommendations from the small business advisory committee.

Commissioner Uherbelau noted that some elements of the language related to the exemption of small emergency generators appears contradictory to the proposed adoptions of the EPA requirements. Ginsburg clarified the issue, with input from Ebersole and Uri Papish, air quality program operations manager.

Action: Adopt rule amendments to OAR chapter 340, divisions 200, 209, 210, 216, 228, 238 and 244 as presented in attachment A of this agenda item, and amend the Clean Air Act implementation plan (OAR 340-200-0040) to include the amendments made to OAR 340-244-0238 through 0246 and the amendments made to OAR 340 Divisions 200, 210 and 216 and authorize DEQ to submit these amendments to the state implementation plan to EPA for approval.

Move: Commissioner O’Keeffe

Second: Commissioner Dodson

Passed unanimously

The commission recessed at 5 p.m. on Thursday, Dec. 10, 2009, until 8 a.m. on Friday, Dec. 11, 2009.

Breakfast and executive session

The commission met in executive session from approximately 8 to 9 a.m. to discuss the annual performance evaluation for Director Pedersen. The session was held pursuant to 192.660(2)(a).

K. Public forum

Three members of the public gave public comment at the meeting, and one letter was submitted for inclusion in the commission’s official record of public comment.

1. Jim Welsh, representing the Oregon Cattlemen’s Association, addressed water quality and the ongoing discussion about possible revision of nonpoint source discharge permits. Welsh noted that his clients understand that the revisions will result in changes to water quality management plans and possible management practice provisions. He asked commission members if they understood the scope of the work that revisions will entail, and noted that the cattlemen and ranchers have made great strides forward in environmental protection and water quality concerns. Welsh stated that it could create an issue of pitting rural Oregon against urban Oregon, and that all must work together since all want clean water. He noted that discussion has been limited, and is happy to hear that the time to consider the issue has been extended, but that six additional months may not be sufficient to include all the interested and effected parties. Welsh stated that the process has not been transparent and open, and that his clients want to be involved. The commission discussed several points of Walsh’s statement, and Director Pedersen stated that DEQ will make sure information is provided to the Oregon Cattlemen’s Association. Commissioner O’Keeffe added that the commission welcomes that involvement, and wants to work with landowners in a productive way.

2. Kathey Butters stated that she is attending the meeting today based on information posted on DEQ’s website indicating that agenda item P, the NESHAP rulemaking, was scheduled for Friday after the public forum. Butters noted that it is very important for the commission to understand that adjusting the meeting agenda and not immediately posting those changes to the website is a frustrating issue that resulted in her rearrangement of 12 employee schedules multiple times. The DEQ website is the only place for people to get information for the commission’s agendas, and requested clarification of the best place for information gathering. Butters asked DEQ to notify effected parties if agenda items are moved during the course of the meeting. The commissioners agreed with Butters that

the rearrangement of commission agendas is a legitimate concern that for businesses and members of the public who wish to attend the meeting. The commissioners invited Butters to present her comments related to the NESHAP rulemaking, but she declined.

3. Kathryn VanNatta, representing Northwest Pulp and Paper, noted that this is the second year in a row that she and Larry Knudsen, general counsel for the commission, have spent their birthdays at EQC since December 11 is their shared birthday. VanNatta noted that her intended comments are related to the second phase of greenhouse gas rules, to be proposed in 2011, and their relationship to proposed federal rules. VanNatta asked the commission and DEQ to create an equitable system for greenhouse gas reporting fees where all reporters pay fees equitably and that sources that will have to report to both EPA and Oregon are required to submit to one database and are not subject to duplicative reporting requirements and fee structures. VanNatta noted that DEQ should create an efficient process to limit duplication of data reporting and associated fees for sources in Oregon required to report to DEQ and EPA.

4. Chair Blosser noted the submission of a letter of public comment from the Friends of Family Farmers organization. Commission Uherbelau asked for clarification on a point raised in the letter related to incorrect information being posted on DEQ's website about the nature of the CAFO agenda item being an informational, not action, item. Stephanie Clark, the commission's assistant, clarified the point and noted that the information on the website was incorrect due to a technical error when updating the agenda based on other changes to the meeting schedule. Clark explained that she, and a staff member from the water quality division, discussed this issue with the letter's author when contacted in late yesterday, Thursday, Dec., 11, 2009.

This item was removed from the agenda prior to the meeting

O. Informational item: Portland municipal wastewater permit

Q. Action item: Greenhouse gas reporting fees temporary rulemaking

Andy Ginsburg, air quality division administrator, and Andrea Curtis, air quality program operations natural resource specialist, presented background information on the proposed temporary rules. Curtis stated that the proposed temporary rules would be year-one fees for reporting of greenhouse gas emissions. Curtis explained that the proposed rules are temporary based on timing of the Legislature approving authorization for the fees in July 2009, and that DEQ worked with an advisory committee and engaged in a public outreach process to gather public comment.

Curtis explained the advisory committee's recommendations and considerations, and discussed the process for the temporary rulemaking's next steps. The commission asked clarifying and informational questions. Vice-chair Williamson asked if the emissions would be calculated based on consumption or emission inventory, and Ginsburg replied that DEQ is developing a consumption-based inventory and the reporting program will be strongly tied to the emission inventory and production base but both approaches are important.

Commissioner Uherbelau asked if the differences between requirements in Oregon and at the federal level creates a problem for sources reporting to both, and Ginsburg noted that it does create some complications but that DEQ is committed to aligning the requirements with EPA for those sources. Ginsburg explained that EPA has not finalized its requirements, and DEQ's goal is to make all the systems work together despite a number of technical challenges.

Action: Adopt proposed rule amendments as presented in attachment A of this agenda item to create fees for sources subject to Oregon's greenhouse gas reporting rules, pursuant to ORS 468A.050(1)(4)(a), for the 2010 calendar year; and adopt the justification for temporary rules as provided in attachment B of this agenda item.

Move: Commissioner Uherbelau

Second: Commissioner O'Keeffe

Passed unanimously

R. Commissioner reports

With no individual matters on which to report, the commission discussed potential retreat planning for May 2010, and Director Pedersen gave some clarifying information on meeting timing and locations. Chair Blosser noted that past retreats have involved external partners, and the meetings are open to the public, so the location and timing of the retreat must be convenient for all commissioners and reasonable for members of the public. Chair Blosser and Vice-chair Williamson will work with DEQ staff members to plan the retreat, and will update the commission at the February 2010 meeting with any additional information.

Chair Blosser adjourned the public meeting at 9:45 a.m., Friday, Dec. 11, 2009.

Executive session

The commission met in executive session from approximately 9:45 to 11:15 a.m. to discuss the annual performance evaluation for Director Pedersen. The session was held pursuant to 192.660(2)(a).