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Minutes of the 385th regular meeting of the Oregon Environmental Quality Commission

Oct. 14-15, 2015
Klamath County Board of Commissioners Building
Main conference room, 2nd floor
305 Main Street, Klamath Falls

Wednesday, October 14 – 9 a.m. to 4:15 p.m.

Chair O'Keeffe convened the meeting at 9 a.m.
Present: Chair O'Keeffe, Vice-chair Armstrong, Commissioner Johnson and Commissioner Eden

Before the start of commission business, Klamath Commissioner Kelley Minty Morris welcomed EQC and officially gaveled-in the meeting. Chair O'Keeffe introduced Tracey Liskey, representing the Board of Agriculture as liaison to EQC.

A. Action item: Draft meeting minutes from August 2015

The commission reviewed and took action on draft minutes from the Aug.12-13, 2015, regular EQC meeting.

Action: Approve the minutes as presented.
Move: Vice-chair Armstrong
Second: Commissioner Eden

The commission unanimously approved the action

B. Informational item: EQC's role in contested cases

Leah Feldon, Office of Compliance and Enforcement manager, introduced this item and co-presented with Sarah Wheeler, Environmental Law Specialist. Feldon and Wheeler presented information in response to commission questions regarding contested case hearings and other clarifying information about the processes related to the cases.

The commissioners asked clarifying and informational questions about the information and implications of various options. Larry Knudsen, the commission's legal counsel, provided additional clarification throughout this item. The commissioners requested at least 30 days to review the contested case materials before any commission action. Commissioners also inquired if they could have separate meetings, potentially by phone at times, for contested cases. Staff confirmed their ability to meet these requests to meet the commissioner needs.

Commisisoner Eden noted that one of the major objectives of the commission's process is to give people their opportunity for their "day in court" without the requirement of lawyers or other formal processes. She also stated that the commission's objective to hear the cases also supports EQC's engagement in policy development for DEQ. Vice-chair Armstrong expressed interest in having commission time to reflect on policy decisions or learning through the case process, following decisions and in support of

ongoing policy engagement. Commission Johnson noted her support for a subcommittee process, especially in the event of a case that is very complex or otherwise simpler to assess as a small group with a recommendation to the full body.

Commissioners expressed support for retaining the current process, with more time given to commissioners for their review of materials prior to a meeting, and an opportunity to schedule the cases separate from other commission business. They also supported time at a post-appeal timeframe to discuss policy and other questions about contested case decisions.

Staff committed to meet these requests, and to provide some general information on how a subcommittee process might work for the commission.

C. Informational item: Oregon's Confined Animal Feeding Operations Program

Beth Moore, Water Quality Program permit coordinator, and Wym Matthews, Oregon Department of Agriculture CAFO Program manager, co-presented on the CAFO program. Moore noted that the program is operated by the Department of Agriculture under an interagency Memorandum of Understanding and that DEQ intends to propose a request for commission authorization of an updated MOU at the December 2015 EQC meeting.

Matthews described the CAFO program at the Department of Agriculture and Moore described the DEQ role in the CAFO program. Commissioners asked clarifying and informational questions about the program. Director Pedersen noted that the program is an excellent partnership.

D. Informational item: Water Quality Program overview and plans

Jennifer Wigal and Eric Nigg, Water Quality Program managers, co-presented an overview of the current Water Quality Program status, its challenges, opportunities and long-term program planning. The commissioners asked a number of clarifying and informational questions. Larry Knudsen, commission legal counsel, provided some clarifying and legal information in addition to staff responses.

Lunch: Chair O'Keeffe recessed the commission for lunch from noon to 1 p.m.

E. Informational item: Director's report

Director Pedersen presented written and verbal updates about DEQ, state and federal environmental activities of interest to the commission.

Prior to presenting the written information, Director Pedersen recognized Palmer Mason, DEQ's Legislative manager, for an award presented to him by Governor Brown at the close of the 2015 Legislative Session. Mason joined the meeting by telephone conference call for this item.

The written updates included information about:

- Federal revisions to the ozone air quality standard
- The rule development process for water quality standards for bacteria
- DEQ's role, in coordination with other state agencies, for Measure 91 and ensuring marijuana businesses are in compliance with existing environmental regulations
- Wildfire cleanups and disposal of debris, including waiving certain disposal fees for cleanup and waste disposal efforts in Baker, Douglas, Grant and Wallowa counties

- Recent media coverage about DEQ's asbestos program
- Odor concerns in the Hayden Island and Jantzen Beach areas of Portland
- State and federal processes for permits and other actions associated with liquefied natural gas projects

Director Pedersen also presented verbal updates about:

- Updates on work at Portland Harbor, including the recently-issued Feasibility Study for the Superfund cleanup and a meeting of the Remedy Review Board planned for November
- His activities with the Environmental Council of States
- Increasing the agency's social media outreach

F. Informational item: Commissioner reports and agenda planning discussion

Commissioners provided verbal updates on their activities and other items of interest to the commission. Tracey Liskey, Board of Agriculture, provided an update on a recent meeting of that board. Greg Aldrich, Office of Policy and Analysis manager, presented a proposal for 2016 meeting dates and other general agenda planning for the commission. He noted that the Board of Agriculture's formal liaison Stephanie Hallock has taken a leave for professional reasons, and the commission expressed an interest in having meeting-area members attend the EQC meetings until Hallock returns to her role in approximately six months.

G. Informational item: Eastern Region highlights

Linda Hayes-Gorman, Eastern Region Division administrator, introduced this item and provided an overview of the topics to be presented by DEQ staff and project partners. Eric Nigg, Eastern Region Water Quality Program manager, and Mike Hiatt, Klamath Basin TMDL coordinator, presented updates on water quality issues and activities in the Klamath Basin.

Katie Robertson, Cleanup Project manager, and Kelly Hill, South Central Regional Solutions Team members, presented updates on the North Ridge Estates Superfund site outside Klamath Falls. Robertson noted that the site is an EPA-led cleanup, with DEQ as a project partner, and she described the issues and proposed solutions for the site. Hill provided additional information about the work the Regional Solutions Team has done at this site.

Larry Calkins, Air Quality Program specialist, and Kelly Hill presented about air quality concerns in Klamath Falls and Lakeview. Calkins outlined the issues for the communities, their work to improve air quality and the successes to-date of these communities to meet all state and federal air quality standards.

Linda Hayes-Gorman provided additional recognition for ongoing regional projects for environmental protection. Each presenter noted the importance and necessity of partnerships to improve Oregon's environment. Director Pedersen thanked the DEQ staff, project partners and other governments for their efforts. He specifically noted that the Eastern Region staff from DEQ cover an enormous geographic area and their significant involvement across the landscape is reflected in the projects discussed today.

Chair O'Keeffe recessed the commission at approximately 4:15 p.m. until 8:30 a.m. on Thursday, October 15.

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Wednesday evening meet-and-greet
Commissioners and some DEQ staff participated in an informal session on Wednesday evening. The session took place from 5 to 6:15 p.m. in the same venue as the main meeting, but is not part of the formal commission agenda. Comments and discussion were not recorded and are not considered part of the formal commission record. The event was presented as an opportunity for Oregonians to discuss environmental matters in an informal setting.

Thursday, October 15 – 8 a.m. to 4 p.m.

- *The commission will hold a morning tour and reconvene at 11 a.m. for its regular meeting agenda.*

H. Tour: Oregon Institute of Technology Geothermal and Renewable Energy Lab and programs
Commissioners, some staff and project partners took a morning tour of the lab and programs for geothermal and renewable energy at the Oregon Institute of Technology's campus.

Chair O'Keeffe reconvened the meeting at 11 a.m.
Present: Chair O'Keeffe, Vice-chair Armstrong, Commissioner Johnson and Commissioner Eden

I. Public forum
The commission opened public forum at 11 a.m. Eight people submitted registration forms to present comment in-person in Klamath Falls. No people submitted registration forms to comment by phone from the Bend, Eugene or Portland (headquarters) DEQ offices.

1. Klamath County Commissioner Jim Bellet presented comment requesting that DEQ provide additional funding for the air quality work and public health protection in Klamath Falls.

2. Clair Klock, Clackamas Soil and Water Conservation District, thanked DEQ and the commission for its funding to the district for watershed protections through the Clean Water State Revolving Loan Fund.

3. Forrest English, Rogue Riverkeeper, presented comments regarding the proposed water quality rules and Internal Management Directive as well as the organization's opposition to proposed liquefied natural gas terminals at Jordan Cove. He encouraged DEQ to require specific permit information, as previously requested, from the applicant before considering any action.

4. George Sweigert, Klamath Falls resident, presented comments encouraging DEQ to connect with the public education sector and continue its outreach through social media to personalize the agency and the commission.

5. Vicki Simpson, Ashland citizen, presented comments regarding water quality certification issues and environmental concerns about the Pacific Connector/Jordan Cove pipeline proposal.

6. Jaymie Exley, No LNG Exports, presented comments in opposition to the proposed Jordan Cove project, and asked DEQ to be exceedingly thorough in its review of all permit application materials. She requested that DEQ demand all documentation and materials for the application review.

7. Mike Freese, Associated Oregon Industries, presented comments regarding price impacts to consumers related to Oregon's Clean Fuel Standard, the federal Clean Power Plan and a recent federal court decision regarding EPA's authorities to regulate waters of the United States.

8. Dale Feik, citizen, presented comments regarding air quality concerns associated with proposed emissions from Intel facilities in Hillsboro. He noted other environmental concerns and also complimented DEQ staff, especially Jennifer Wigal, for their work.

Following the public testimony, Chair O'Keeffe invited Tracey Liskey, member of the Board of Agriculture, to present comments regarding water issues in the Klamath Basin.

Chair O'Keeffe closed the public forum at 11:50 a.m.

Lunch: Chair O'Keeffe recessed the commission for an executive session and working lunch from approximately noon to 1:30 p.m. Commissioners, some staff and representatives from the Oregon Department of Justice met for an executive session over this working lunch. This executive session was held in accordance with state public meeting laws.

J. Action item: PM 2.5 updates and SIP approval

David Collier, Air Quality Program manager, and Nancy Cardwell, Air Quality Program specialist, presented proposed updates to Oregon's rules for fine particulate matter, measuring 2.5 microns or less in diameter, as part of an alignment with federal changes to the Clean Air Act. Cardwell noted that the request also includes authorization to update Oregon's State Implementation Plan for air quality standards and incorporate the definition of fine particulate matter into Oregon's National Ambient Air Quality Standards as a clarification.

Cardwell described the proposed rules and information in the staff report and attachments. Commissioners asked clarifying and informational questions about the materials.

Action:

1. Adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules;
2. Approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040 with a date correction to reflect the commission's action on Oct. 15, 2015; and
3. Direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval

Move: Commissioner Johnson
Second: Vice-chair Armstrong

The commission unanimously approved the action.

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K. Informational item: Oregon's Clean Power Plan
Colin McConnaha, Greenhouse Gas Emissions specialist, presented information about the federal Clean Power Plan, under part 111(d) of the Clean Air Act, and DEQ's role in coordinating Oregon's state response and plan. Commissioners asked clarifying and informational questions about the federal program and Oregon's next steps to develop a state plan.

L. Action item: Clean Water State Revolving Loan Fund Program rule revisions
Anita Yap, Community Assistance Program manager, Larry McAllister, acting Clean Water State Revolving Fund Loan Program coordinator, and Kathy Estes, program financial specialist, presented proposed Clean Water State Revolving Loan Fund Program. Yap noted that the proposed revisions are based on state alignment with recent updates to the federal Clean Water Act.

McAllister discussed the federal changes in 2014 and Oregon's work to revise its state rules to meet the new federal requirements. Estes provided detail on the proposed changes to the state rules. McAllister noted that the federal changes did result in a change to the definition of borrowers that limits eligibility for principle forgiveness to state agencies, municipalities and inter-municipalities. He noted that irrigation districts and soil and water conservation districts appear to be ineligible under the revised federal rules and that DEQ is working with the Department of Justice and Oregon Water Resources Congress to analyze the issue and find options for potential remedies. The commissioners asked clarifying and informational questions about the definitional issue, and generally about the proposed rules. Larry Knudsen, the commission's legal counsel, provided additional clarification in response to the commissioners' questions. Commissioner Johnson requested that staff work to correct the ineligibility issue for irrigation districts.

> Action: Adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.
> Move: Vice-chair Armstrong
> Second: Commissioner Eden
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> *The commission unanimously approved the action.*

Following the commission action, Chair O'Keeffe invited April Snell, Oregon Water Resource Congress executive director, to provide brief comments on the principle forgiveness issues associated with irrigation districts. Snell noted a commitment for the irrigation districts to work with DEQ to resolve the concerns with the federal definitions and to continue ongoing work with DEQ staff for other solutions.

M. Informational item: Budget and legislative updates
Greg Aldrich, Office of Policy and Analysis manager, provided updates on the agency, state and federal budget and legislative matters. He provided a brief update on the September Legislative Days, the status of DEQ's 2015-17 Operating Budget, a review of the planning for DEQ's 2017-19 budget development process, information about what other boards and commissions do to connect with their agency's budgets and planning for the November 5 budget development meeting and work session for the commission.

The commissioners provided feedback on the information provided, including the proposed agenda outline for the November 5 work session on strategic planning and budget development. Director

Pedersen provided additional information about the agency's outcome measure-based approach and the connections to those outcomes for the commission's work.

Chair O'Keeffe adjourned the meeting at approximately 4 p.m.

2015 EQC meeting dates

November 5: Special meeting for a budget development work session, *Portland area*
December 9-10: Regular meeting, *Portland area*