

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 4, 2008
To: Environmental Quality Commission
From: Dick Pedersen, Director
Subject: Agenda Item I, Rule Adoption: Conforming Oregon Air Quality Rules to Federal Clean Air Act Requirements
August 21-22, 2008 EQC Meeting

Why this is Important Senate Bill 235 (2007) updated Oregon's air quality laws to be consistent with the federal Clean Air Act by allowing the Environmental Quality Commission to limit emissions from agricultural sources if needed to meet federal CAA requirements. This proposed rulemaking would align Department of Environmental Quality rules with the updated statutes.

Department Recommendation DEQ recommends that the EQC adopt the proposed rule amendments presented in Attachment A to align Oregon Administrative Rules with Oregon Revised Statutes 468A.020 and to make revisions to the State of Oregon Clean Air Act implementation plan and the Oregon Title V operating permit program.

Background and Need for Rulemaking The CAA does not provide an exemption for agricultural operations while, prior to 2007, Oregon's state law exempted most agricultural operations from air quality regulations. In the fall of 2005, several environmental groups petitioned the U.S. Environmental Protection Agency to revoke its approval of Oregon's air quality permitting program and the State Clean Air Act Implementation Plan, or SIP, because of the blanket exemption for agricultural sources. This proposed rulemaking is needed to align DEQ rules to ORS 468A.020 as updated by SB 235.

Effect of Rule The effect of these amendments is to update the OAR to be consistent with the statute, which allows agricultural air quality pollution sources to be regulated as necessary to implement the CAA.

Commission Authority The EQC has authority to take this action under ORS 468.020 and 468A.020.

Stakeholder Involvement During 2006, representatives from agricultural industries and environmental stakeholders met four times to draft Senate Bill 235 for the governor to submit to the 2007 Legislature on behalf of the Oregon Department of Agriculture and DEQ. These same groups were instrumental in discussions about SB 235 during the 2007 session.

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Public Comment DEQ held a public comment period from April 7, 2008 to May 23, 2008, including a public hearing in Portland on May 19, 2008. Comments and responses to public input are provided in Attachment C.

Key Issues Because of the revisions to ORS 468A.020, this proposed rulemaking to make DEQ rules consistent with current statute may affect large agricultural operations, particularly the owner/operators of large confined animal feeding operations or CAFOs. Agricultural operations with emissions above federal thresholds may be subject to federal permitting rules and need to obtain a federal air operating permit.

ODA and DEQ are developing a memorandum of understanding to address authority and implementation issues in the event an agricultural facility needs to obtain a federal permit.

Next Steps The proposed effective date for these rule amendments is September 15, 2008. If adopted by the EQC, DEQ will submit the revised rules to the EPA for approval as a revision of the SIP. This will resolve the petition received by EPA in 2005 and allow the proper functioning of Oregon's air quality program.

No new resources are needed to implement these rule amendments. ORS 468A.020 authorizes the EQC to limit emissions from agricultural sources if needed to meet federal CAA requirements, such as National Ambient Air Quality Standards, federal air toxic requirements, or regional haze issues. However, no such requirements are included in this rulemaking and any such requirements would need to be adopted by the EQC in future rulemakings.

The MOU between the EQC and ODA will be finalized and brought to the EQC for approval at a future meeting.

The Rule Implementation Plan is available upon request.

Attachments

- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses
- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements Questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation Statement

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- Available Upon Request**
1. Legal Notice of Hearing
 2. Cover Memorandum from Public Notice
 3. Written Comment Received
 4. Rule Implementation Plan

Approved:

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